ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 35, NUMBER 4
WEDNESDAY, OCTOBER 1, 2008

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet October 14, 2008 at 10 a.m. in room 149 Capitol Annex. See **tentative agenda** on pages **705-707** of this Administrative Register.

The **Education Assessment and Accountability Review Subcommittee** is **tentatively** scheduled to meet Tuesday, October 14, 2008 at 10:00 a.m. in Room 131 of the Capitol Annex. 703 KAR 5:070 and 703 KAR 5:080 are on the EARRS Agenda.

Part 1 of 2

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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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806 KAR 17:500. Basic health benefit plan requirements.
806 KAR 17:540 & E. ICARE Program high-cost conditions. ("E" expires 1/1/09)
806 KAR 17:545 & E. ICARE Program employer eligibility, application process, and requirements. ("E" expires 1/1/09)
806 KAR 17:555 & E. ICARE Program requirements. ("E" expires 1/1/09)

Horse Racing Commission

Thoroughbred Racing
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810 KAR 1:015. Claiming races. (Not Amended After Comments) (Deferred from May)
810 KAR 1:025. Licensing thoroughbred racing. (Comments Received)

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811 KAR 1:070. Licensing standardbred racing. (Comments Received)

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Office of the Secretary

E-Health

900 KAR 7:020. Kentucky e-Health Corporation. ("E" expired 3/16/08) (Deferred from December)

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902 KAR 55:030. Schedule IV substances. (Not Amended After Comments) (Deferred from September)

Department for Medicaid Services

Medicaid Services

907 KAR 1:015. Payments for outpatient hospital services. (Comments Received)
907 KAR 1:835 & E. Michelle P. Waiver services and reimbursement. ("E" expires 1/13/09)

MOVED TO NOVEMBER 2008 AGENDA DUE TO DEFERRAL OR RECEIPT OF COMMENTS

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Division of Water

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Board of Education
Department of Education

School Terms, Attendance and Operation

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Department for Medicaid Services

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ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, SEPTEMBER 15, 2008

STATEMENT OF EMERGENCY
105 KAR 1:140E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed amendment to this administrative regulation should be enacted on an emergency basis. The emergency amendment to this administrative regulation is necessary for compliance with 26 U.S.C. Section 401(a)(17) in order for Kentucky Retirement Systems to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. Section 401(a). An emergency amendment to the administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to achieve compliance with the requirements of 26 U.S.C. in order to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. Section 401(a). This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to this administrative regulation. The ordinary amendment to the administrative regulation was filed with the Regulations Compiler on September 2, 2008.

STEVEN L. BESHEAR, Governor
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Emergency Amendment)

105 KAR 1:140E. Contribution reporting.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 26 U.S.C. 401(a)(17), 26 U.S.C. 401(a)(17)(B), 26 U.S.C. 401(a)(31), 26 U.S.C. 403(b), 26 U.S.C. 408(a), (b), 26 U.S.C. 414 (g)(6), 26 U.S.C. 457(b).

STATUTORY AUTHORITY: KRS 61.560, 61.645(9)(f), 61.675, 61.685, 78.545(24), 78.610, 78.615

EFFECTIVE: September 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required to report creditable compensation and contributions to the retirement systems and other information that the Board of Trustees may require. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall report the creditable compensation and contributions of its employees at least once per month on the Form 3, Summary of Wages Earned, or by diskette or tape in the electronic format "KRSPAY" or other electronic format acceptable to the retirement system. Each employer who reports on diskette or tape may report on a semimonthly basis. Each employer shall report only the creditable compensation earned during the period for which the report is prepared and shall report only the employee and employer contributions on the basis of this creditable compensation.

(2) Creditable compensation for a lump-sum bonus, severance pay, or an employer-provided payment for purchase of service credit shall be made in accordance with the provisions of KRS 16.505(8), 61.510(13), or 78.510(13). Total service shall include all service credit earned as of the date of the report or purchase.

(3)(a) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), $150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(b) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(c) Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds $200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B) may not be taken into account in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(d) A participating member whose creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002, and who has filed a notification of retirement may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if the excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 2. If creditable compensation in excess of actual compensation is reported, the employer shall request a refund of the excess employer and employee contributions. The retirement system shall remit the excess employer and employee contributions to the employer in the form of checks made payable to the employer. The employer shall distribute the employee's contributions to the employee if the amount is due the employee after making payroll deductions in accordance with federal and state law.

Section 3. If creditable compensation is reported that is less than actual creditable compensation paid to the employee by the employer, the employer shall report the deficiency by pay period to the retirement system along with the employer and employee contributions owed as a result of the deficiency. The employer may report the additional creditable compensation by letter or other form which shall include:

(1) The Social Security number, name and gross creditable compensation of the employee by pay period.

(2) The total employer and employee contributions required on the additional creditable compensation and the computation of both amounts.

(3) The signature of the individual authorized by the agency to report contributions to the retirement system.

Section 4. If an expense allowance is paid to a county official by the state, the state shall withhold the employee contributions applicable to the amount and remit it to the retirement system on behalf of the county. The county shall report the employer contributions on the Form 3-E, Expense Allowances Quarterly Report.

Section 5. An employer may change the name or address of an employee by submitting a letter or personnel document effecting the change signed by a personnel or payroll official.

Section 6. Each employer shall provide to the retirement system, upon request and in the form prescribed by the retirement system, information relating to all employee wages, employment status or other employment related information. Upon request, each employer shall make all relevant records related to its employees available to the retirement system during regular working hours.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 3, Summary of Wages Earned, June 1991", Kentucky Retirement Systems; and

(b) "Form 3-E, Expense Allowances Quarterly Report, July 1991", Kentucky Retirement Systems.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures and methods for employers participating in CERS, KERS, and SPRS to report employer and employee contributions to Kentucky Retirement Systems and the effect of the maximum annual compensation limit in 26 U.S.C. 401(a)(17) on the amount of contributions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and methods for contribution reporting by employers participating in CERS, KERS, and SPRS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Employers are required to report employee and employer contributions by KRS 16.543, 16.545, 16.645(4), 61.543, 61.560, 61.565, 61.675, 78.545(24), 78.545(34), 78.610, 78.615, and 78.625. This administrative regulation establishes the guidelines, procedures, and methods for employers participating in CERS, KERS, and SPRS to report employer and employee contributions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidelines, procedures and methods for contribution reporting by employers participating in CERS, KERS, and SPRS.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds language regarding contribution reporting limits required for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add language regarding contribution reporting limits required for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adding language regarding contribution reporting limits that is required for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(d) How the amendment will assist in the effective administration of the statutes: Participating agencies will be aware of the procedures regarding reporting contributions and the limitations established by federal law.

(3) List the type and number of individuals, businesses, organizations, or state
and local governments affected by this administrative regulation: All agencies participating in one of the systems administered by Kentucky Retirement Systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The participating agencies will have to comply with reporting contribution limits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to employers participating in KERS, CERS, and SPRS as they are already required by statute to report employer and employee contributions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members and participating employers are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Agencies participating in one of the systems administered by Kentucky Retirement Systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.560, 61.645(9)(g), 61.675, 61.685, 78.545(24), 78.610, 78.615, 26 U.S.C. 401(a)(17), 401(a)(17)(B), 414 (g)(6), 401(a)(31), 408(a), (b), 403(b), 457(b).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no substantive effect on administrative expenditures and no effect on revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This admin-

istrative regulation will not generate any revenue for Kentucky Retirement Systems or its participating agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for Kentucky Retirement Systems or its participating agencies.

(c) How much will it cost to administer this program for the first year? There will be little to no additional administrative costs for Kentucky Retirement Systems or its participating agencies because the participating agencies are already required to report contributions.

(d) How much will it cost to administer this program for subsequent years? Minimal additional administrative costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. 401(a)(17), 401(a)(17)(B), 414 (g)(6), 401(a)(31), 26 U.S.C. 408(a), (b), 403(b), 457(b).

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
105 KAR 1:345E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed new administrative regulation should be enacted on an emergency basis. This emergency administrative regulation is necessary for compliance with 26 U.S.C. 401(a)(31) in order for Kentucky Retirement Systems to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. 401(a). An emergency administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to achieve compliance with the requirements of 26 U.S.C. in order to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. 401(a). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 2, 2008.

STEVEN L. BESHEAR, GOVERNOR
RANDY OVERSTREET, CHAIR

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Emergency Administrative Regulation)

105 KAR 1:345E. Rollovers and transfers of contributions to other plans.

RELATES TO: KRS 16.510-16.652, 61.515-61.705, 78.520-78.852, 26 U.S.C. secs. 401(a)(31), 402(c), 408(d)(3)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

EFFECTIVE: September 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: For purposes of compliance with 26 U.S.C. 401(a)(31), this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Section 1. (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is:

(a) One of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent such distribution is required under 26 U.S.C. 401(a)(9);

(c) The portion of any distribution that is not includible in gross income; and

(d) Any other distribution that is reasonably expected to total less than $200 during the year.

Section 2. (1) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution plan described in 26 U.S.C. 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in 26 U.S.C. 401(a) or to an annuity contract described in 26 U.S.C. 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).

(2) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in 26 U.S.C. 408(a);

(b) An individual retirement annuity described in 26 U.S.C. 408(b);

(c) An annuity plan described in 26 U.S.C. 403(a);

(d) A qualified trust described in 26 U.S.C. 401(a);

(e) Effective January 1, 2002, an annuity contract described in 26 U.S.C. 403(b),

(f) Effective January 1, 2002, a plan eligible under 26 U.S.C. 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or

(g) Effective January 1, 2008, a Roth IRA described in 26 U.S.C. 408A.

(3)(a) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S.C. 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(b) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement

Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines eligible rollover distributions, eligible retirement plans, distributes, and direct rollover for purposes of compliance with federal tax law.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to defines eligible rollover distributions, eligible retirement plans, distributes, and direct rollover for purposes of compliance with federal tax law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by defining eligible rollover distributions, eligible retirement plans, distributes, and direct rollover for purposes of compliance with federal tax law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems who become eligible to withdraw their contributions and decide to rollover or transfer their contributions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If members seek to rollover or transfer their eligible rollover contributions, the members will be required to rollover or transfer their eligible rollover contributions to eligible retirement plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ordinary administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. secs. 401(a)(31), 402(c), 408(d)(3)

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
105 KAR 1:380E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed amendment to this administrative regulation should be enacted on an emergency basis. The emergency amendment to this administrative regulation is necessary for compliance with 26 U.S.C. Section 415 in order for Kentucky Retirement Systems to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. Section 401(a). An emergency amendment to the administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to establish the minimum distribution required by 26 U.S.C. Section 415 in order to achieve compliance with the requirements of 26 U.S.C. in order to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. Section 401(a). The emergency amendment to this administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 2, 2008.

STEVEN L. BESHEAR, Governor
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Emergency Amendment)

105 KAR 1:380E. Minimum distribution.

RELATES TO: KRS 61.645(9)(g), 26 C.F.R. 1.401(a)(9)-0-1.401(a)(9)-9, 26 U.S.C. 401(a)(9)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

EFFECTIVE: September 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(9)(g) and this administrative regulation implement the statutory requirements of IRC Section 401(a)(9), which is codified as 26 U.S.C. 401(a)(9), and are meant to be a reasonable good faith interpretation of those statutory requirements. This administrative regulation establishes minimum distribution requirements in compliance with 26 U.S.C. 401(a)(9).

Section 1. Definitions. (1)[~~"Life expectancy" means life expectancy as computed by use of the Single Life Table in 26 C.F.R. 1.401(a)(9)-9.~~

~~(2)~~] "Member" means a member of a retirement fund established in accordance with KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, and administered by the Kentucky Retirement Systems.

(2)[~~(3)~~] "Required beginning date" means April 1 of the calendar year following the later of:

(a) The calendar year in which the member attains age seventy and one-half (70 1/2); or

(b) The calendar year in which the member retires.

Section 2. (1) This administrative regulation shall[~~:~~

~~(a) Apply for purposes of determining required minimum distributions;~~

~~(b) Comply with the requirements of 26 U.S.C. 401(a)(9); and~~

~~(c)~~] Apply to members of a fund established in accordance with KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.

(2) Kentucky Retirement Systems shall pay all benefits in accordance with a good faith interpretation of the requirements of 26 U.S.C. 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of 26 U.S.C. 414(d). The requirements of 26 U.S.C. 401(a)(9) shall take precedence over any inconsistent provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852.

(3) The member's entire interest shall be distributed over the member's life or lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.[~~All distributions required pursuant to this administrative regulation shall be determined and made in accordance with treasury regulations established in 26 C.F.R. 1.401(a)(9)-0-1.401(a)(9)-9.~~]

Section 3. (1) Except as provided in subsection (2) of this section, the member's entire interest shall be distributed, or begin to be distributed, to the member no later than the member's required beginning date.

(2) If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, no later than as follows:

(a) Except as provided in paragraph (d) of this subsection, if the member's surviving spouse is the member's sole designated beneficiary, distributions to the surviving spouse shall begin by the later of:

1. December 31 of the calendar year immediately following the calendar year in which the member died; or

2. December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2);

(b) If the member's surviving spouse is not the member's sole designated beneficiary, distributions to each designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died;

(c) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death; or

(3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest shall be distributed at least as rapidly as under the method of distribution before the member's death.[~~(d) the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, paragraphs (b) and (c) of this subsection shall apply as if the surviving spouse were the member and paragraph (a) of this subsection shall not apply.~~]

(4)[~~(3)~~](a) For purposes of subsections 2 through 6[~~subsection (2)(a) through (c) of this section and Section 5~~] of this administrative regulation, distributions shall be required[~~considered~~] to begin on the member's required beginning date.

(b)[~~If subsection (2)(d) of this section applies, distributions shall be considered to begin on the date distributions shall be required to begin to the surviving spouse pursuant to subsection (2)(a) of this section.~~

~~(c)~~] If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse pursuant to subsection (2)(a) of this section, the date distributions are considered to begin shall be the date distributions actually commence.

Section 4. (1) If the member's interest is paid in the form of annuity distributions, payments pursuant to the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in monthly periodic payments[~~made at intervals not longer than one (1) year~~];

(b) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in this section or Section 4 or 5 of this administrative regulation;

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted; and

(d) Payments shall increase only as follows:

1. By the annual percentage increase provided for pursuant to KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852;

2. To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in this section dies, or if the beneficiary is the member's spouse and they divorce, as provided in KRS 61.635(10);

3. To provide cash refunds of employee contributions upon the member's death; or

4. To pay any increased benefits that result from a plan amendment.

(2)(a) The amount that shall be distributed on or before the member's required beginning date, or if the member dies before distributions begin, the date distributions are required to begin pursuant to Section 3(2) of this administrative regulation, shall be the payment that is required for one (1) month.

(b) The second payment shall not be required to be made until the end of the next payment interval even if that payment interval ends in the next calendar year.

(c) All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for months ending on or after the member's required beginning date.

Section 5. (1) The amount of annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of 26 U.S.C. 401(a)(9)(G), and the minimum distribution incidental benefit rule under 26 C.F.R. 1.401(a)(9)-6, Q&A-2.

(2) The death and disability benefits provided by Kentucky Retirement Systems are limited by the incidental benefit rule set forth in 26 U.S.C. 401(a)(9)(g) and 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five (25) percent of the cost of all of the members' benefits received from Kentucky Retirement Systems.[~~(a) If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death shall not exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in Q&A-2 of 26 C.F.R. 1.401(a)(9)-6.~~

~~(b) If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in paragraph (a) of this subsection shall apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.~~]

(3)[~~(2)~~](a) Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime shall not exceed the applicable distribution period for the member pursuant to the uniform lifetime table established in 26 C.F.R. 1.401(a)(9)-9 for the calendar year that contains the annuity starting date.

(b) If the annuity starting date precedes the year in which the member reaches age seventy (70), the applicable distribution period for the member shall be the distribution period for age seventy (70) under the uniform lifetime table established in 26 C.F.R. 1.401(a)(9)-9 plus the excess of seventy (70) over the age of the member as of the member's birthday in the year that contains the annuity starting date.

(4)[~~(c)~~] If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain shall not exceed the longer of the member's applicable distribution period, as determined pursuant to this subsection, or the joint life and last survivor expectancy of the member and the member's spouse as determined pursuant to the joint and last survivor table established in 26 C.F.R. 1.401(a)(9)-9, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

Section 6. (1) If the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the entire interest payable to the member shall be distributed, beginning no later than the time established in Section 3(2)(a) or (b) of this administrative regulation, over the life of the designated beneficiary or over a period certain not exceeding:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2)[~~If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.~~

~~(3)~~] If the member dies before the date distribution of the member's interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section shall apply as if the surviving spouse were the member, except that the time by which distributions are required to begin shall be determined without regard to Section 3(2)(a) of this administrative regulation.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for compliance with the minimum distribution requirements of 26 U.S.C. 401(a)(9).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and qualifications for compliance with the minimum distribution requirements of 26 U.S.C. 401(a)(9).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Retirement Systems to maintain its status as a public defined benefit plan under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide procedures for determining the required minimum distributions to be made in accordance with 26 U.S.C. 401(a)(9).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds language regarding minimum distribution requirements necessary to maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add language regarding minimum distribution requirements that are necessary for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adding language regarding minimum distribution requirements that is required for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(d) How the amendment will assist in the effective administration of the statutes: Members will be aware of the minimum distribution requirements.

(3) List the type and number of individuals, businesses, organizations, or state
and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems who are required to take minimum distributions of their accounts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The members and participating employers will be required to submit a completed certification form and the employers will be required to submit reports regarding employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to members.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Ad-

ministrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 C.F.R. 1.401(a)(9)-0-1.401(a)(9)-9 and 26 U.S.C. 401(a)(9)

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
105 KAR 1:390E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed amendment to the administrative regulation should be enacted on an emergency basis. This emergency amendment to the administrative regulation amends the current administrative regulation in accordance with the provisions of HB 1 enacted on June 27, 2008 during the 2008 Special Session of the GA. An emergency amendment to the administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to implement the new provisions of KRS 61.637, which are effective September 1, 2008. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to the administrative regulation. The ordinary amendment to the administrative regulation was filed with the Regulations Compiler on August 21, 2008.

STEVEN L. BESHEAR, Governor
RANDY OVERSTREET, Chair

KENTUCKY RETIREMENT SYSTEMS
Finance and Administration Cabinet
Kentucky Retirement Systems
(Emergency Amendment)

105 KAR 1:390E. Employment after retirement.

RELATES TO: KRS 16.505(15), 61.510, 61.637, 78.510(3), (18), 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.645(9)(g)

EFFECTIVE: September 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. This administrative regulation concerns the administration of KRS 61.637 in conjunction[~~conjuction~~] with federal law regarding bona fide separation from service and changes in employment relationship if a member returns to employment with a Kentucky Retirement Systems participating employer after retirement[~~, whether in a Kentucky Retirement Systems Covered position or a noncovered position~~]. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statues and regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax-qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions. (1) "Initial retirement date" means the member's effective retirement date as defined in KRS 61.590(5).

(2) "Reemployed" for purposes of this administrative regulation and KRS 61.637 does not include a transfer to another position with the same employer.

(3) "Participating employer" means an employer that participates in one of the systems administered by Kentucky Retirement Systems.

Section 2. (1) Returning to work in a participating position. A retired member who is reemployed in a participating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and the member's employer without a prearranged agreement at the time of member's retirement between the member and any participating employer to return to work for any participating employer in any capacity including an agreement to return as a leased employee.

(3) "Break in service" as provided in this section requires:

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(b) A member who retired from a nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(c) A member who retired from a hazardous or a nonhazardous position shall have a three (3) calendar month break in

service before returning to work with a participating employer in a non-hazardous participating position.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with any participating employer, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

Section 3. (1) Returning to work for a participating employer in a non-participating position. A retired member who is employed by a participating employer in a non-participating position shall have:

(a) A bona fide separation from service as provided subsection (2) of this section, and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and the member's last employer without a prearranged agreement between the member's last employer and the member at the time of retirement to return to work for the member's last employer in any capacity after the member's retirement including an agreement to return as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System are treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), will be treated as a separate employer.

(3) "Break in service" as provided in this section requires:

(a) A member who retired from a hazardous position and becomes employed in a nonparticipating hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed in a nonparticipating hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a hazardous or nonhazardous position and becomes employed in a nonparticipating nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

Section 4. (1) Returning to work with the same employer in a position required to participate in a different retirement system. A retired member who is reemployed in a position required to participate in a different retirement system than that from which the retired member is receiving a monthly retirement allowance shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and a participating employer without a prearranged agreement to return to work between the same employer and the member in any capacity at the time of the member's retirement, including an agreement to return as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System are treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), will be treated as a separate employer.

(3) "Break in service" as provided in this section requires:

(a) A member who retired from a hazardous position and becomes employed by the same employer in a hazardous position required to participate in different retirement system than the system from which the retired member is receiving a monthly retirement allowance, shall have a one (1) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed by the same employer in a participating hazardous position in a different retirement system than the system from which the retired member is receiving a monthly retirement allowance, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a nonhazardous or hazardous position and becomes employed by the same employer in a participating non-hazardous or hazardous position in a different retirement system than the system from which the retired member is receiving his monthly retirement allowance, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with the same employer in a position required to participate in a different retirement system than the system from which the retired member is receiving a monthly retirement allowance, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

Section 5. (1) Returning to work for a different participating employer in a non-participating position. A retired member who becomes employed in a non-participating position shall not be required to have a bona fide separation from service if the retired member becomes employed with a different participating employer than the retired member's employer prior to retirement.

(2) A retired member who becomes employed in a non-participating position shall have a three (3) calendar month break in service.

(3) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System are treated as the same participating employer.

(4) For purposes of this section, for County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), will be treated as a separate employer.

Section 6. (1) Requirements before employment after retirement. The retired member and the reemploying employer shall certify that at the time of the retired member's retirement there was no prearranged agreement to employ the retired member after the retired member's retirement. The retired member and reemploying employer shall complete and file at the retirement office the Form 6751, Retired Member and Employer Certification Regarding Reemployment.

(2) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with any participating employer.[~~Bona fide separation from service" means a cessation of the employment relationship between the member and the member's employer without a prearranged agreement between the participating employer and the member upon retirement to return to work for the participating employer after retirement in any capacity, including an agreement to return as a leased employee.~~

~~(2) "Covered Position" means a position required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.~~

~~(3) "Noncovered Position" means a position not required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.~~

~~(4) "Normal retirement age" means:~~

~~(a) Age sixty-five (65) for a nonhazardous member, in accordance with KRS 61.510(18), and 78.510(18); or~~

~~(b) Age fifty-five (55) for a hazardous member as defined in KRS 16.505(15).~~

~~Section 2. Requirements for Commencing a Retirement Benefit. (1)(a) For purposes of commencing a retirement benefit, a member shall terminate employment with the participating employer and shall have a bona fide separation from service, except as provided in Section 9 of this administrative regulation.~~

~~(b) A prearranged agreement to be reemployed as a leased employee or as an independent shall be evaluated by the Kentucky Retirement Systems to determine if there is a continuing employment relationship.~~

~~(2)(a) In order to show compliance with this administrative regulation, the retiring member and the member's last employer shall certify upon application for a retirement benefit that a prearranged agreement to reemploy the retiring member has not been made.~~

~~(b) The member and the member's last employer shall complete and file at the retirement office the Form 6751, Member and Employer Certification Regarding Reemployment.~~

~~(c) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with the same employer from which the member retired or with an employer that participates in the retirement system from which the member retired.~~

~~(d) The retirement office shall not process a monthly retirement allowance until the member has filed the Form 6751, Member and Employer Certification Regarding Reemployment, at the retirement office.~~

~~Section 3. The Same Employer for Purposes of KERS and SPRS. For purposes of applying KRS 61.637, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.~~

~~Section 4. The Same Employer for Purposes of CERS. For purposes of applying KRS 61.637, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.~~

~~Section 5. Returning to work with the same participating employer. (1) Returning to work in a covered position in the same retirement system without a break in service or a bona fide separation from service.~~

~~(a) If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, except as provided in Section 9 of this administrative regulation, and returns to work with the same participating employer, in a covered position in the same retirement system, the member's retirement shall be voided.~~

~~(b) The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.~~

~~(2) Returning to work in a covered position in a different retirement system.~~

~~(a)1. If the member does not have a bona fide separation from service, except as provided in Section 9 of this administrative regulation, and returns to work with the same participating employer in a covered position in a different retirement system, the member's retirement shall be voided.~~

~~2. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.~~

~~(b)1. If a member does have a bona fide separation from service (unless a bona fide separation from service is not required by Section 9 of this administrative regulation) and returns to work with the same participating employer in a covered position in a different retirement system and if the member does not have a one (1) calendar month break in service, the member's benefit shall be suspended for the first month of the member's reemployment.~~

~~2. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the month.~~

~~(3)(a) Returning to work in a noncovered position. If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, and returns to work with the same participating employer, in a noncovered position in any of the systems administered by Kentucky Retirement System, the member's retirement benefit shall be suspended for the duration of the employment.~~

~~(b) If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.~~

~~(4)(a) Returning to work with the same principal duties. If the member has a one (1) calendar month break in service and if there was a bona fide separation from service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with the same principal duties, the member's retirement benefit shall be suspended for a period beginning on the first of the month of the reemployment and ending on the first of the month following six (6) months from the member's first employment termination date, unless the member had reached normal retirement age at the time of employment termination.~~

~~(b) If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.~~

~~(5) Returning to work with different principal duties. If the member has a one (1) calendar month break in service and if there was a Bona Fide Separation from Service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with different principal duties, the member's retirement benefit shall continue unaffected.~~

~~Section 6. Returning to Work for a Different Participating Employer. (1) bona fide separation from service not required.~~

~~(a) If the member returns to work in any position, whether covered or noncovered, with a different participating employer than the member's last employer prior to retirement, a bona fide separation from service shall not be required.~~

~~(b) The requirement that there be at least a one (1) month break in service shall be applicable as established in subsection (5) of this section and in KRS 61.637.~~

~~(2) Returning to work in the same retirement system with a break in service. If the member has a one (1) calendar month break in service, and the member returns to work with a different participating employer in the same retirement system from which the member retired, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.~~

~~(3)(a) Returning to work in a covered position in the same retirement system without a break in service. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in a covered position in the same retirement system from which the member retired, the member's retirement shall be voided.~~

~~(b) The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.~~

~~(4) Returning to work in a noncovered position in the same retirement system without a break in service. If a member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in the same retirement system in a noncovered position the member's retirement benefit shall continue unaffected.~~

~~(5) Returning to work in a different retirement system. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in a different retirement system, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.~~]

Section 7. Status as an Employee. (1) A retired member and a Kentucky Retirement Systems participating employer shall file written notice at the retirement office if the retired member has accepted employment with the participating employer under a personal services contract.

(2) If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor, the retired member shall be subject to Sections 1 through 5[~~and 6~~] of this administrative regulation.

(3) Kentucky Retirement Systems shall take appropriate action to determine the individual's status as an independent contractor or employee.

Section 8. Leased Employees. (1) A retired member and a

participating employer shall file at the retirement office written notice if the retired member is performing work for the participating employer through a private leasing company, a temporary staffing agency, or any other company.

(2) If the retirement system determines that the retired member is an employee of the participating employer, rather than the private leasing company, temporary staffing agency, or other company, the retired member shall be subject to the provisions of Sections 1 through 5[~~and 6~~] of this administrative regulation.

Section 9. [~~A Member who has Reached the Member's Normal Retirement Age. (1) For purposes of administering the provisions of KRS 61.637, a bona fide separation from service shall not be required if a member has attained normal retirement age at the time of termination of employment.~~

~~(2) The requirement that there be at least a one (1) month break in service shall be applicable as set forth in this administrative regulation and in KRS 61.637.~~

~~Section 10.~~] Incorporation by Reference. (1) "Member and Employer Certification Regarding Reemployment", Form 6751, August[~~November 2007~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for returning to employment after retirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer establish the procedures and qualifications for compliance with KRS 61.637, 26 U.S.C. 401(a) and 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the provisions for employment after retirement in accordance with KRS 61.637 and 26 U.S.C. 401(a)(9) 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment complies with amendments made to KRS 61.637 in HB 1 enacted by the 2008 Special Session of the GA.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation. This amendment is necessary to comply with amendments made to KRS 61.637 in HB 1 enacted by the 2008 Special Session of the GA.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to amendments made to KRS 61.637 in HB 1 enacted by the 2008 Special Session of the GA by changing the requirements for becoming employed after retirement and changing the form to be filed by employers and retired members.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by allowing Kentucky Retirement Systems to administer amendments made to KRS 61.637 in HB 1 enacted by the 2008 Special Session of the GA by changing the requirements for becoming employed after retirement and changing the form to be filed by employers and retired members.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems who become reemployed after their effective retirement date and the participating employers who employee them.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The members and participating employers will be required to submit a completed certification form and the employers will be required to submit reports regarding employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ordinary administrative costs. Members and participating employers are already required to submit completed forms and reports to Kentucky Retirement Systems.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members and participating employers are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and its participating agencies.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.637, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no substantive effect on administrative expenditures and no effect on revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for Kentucky Retirement Systems or its participating agencies.

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for Kentucky Retirement Systems or its participating agencies.

(c) How much will it cost to administer this program for the first year? There will be little to no additional administrative costs for Kentucky Retirement Systems or its participating agencies because the Kentucky Retirement Systems already administers KRS 61.637 and the agencies already file reports with Kentucky Retirement Systems.

(d) How much will it cost to administer this program for subsequent years? Minimal additional administrative costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
105 KAR 1:400E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed new administrative regulation should be enacted on an emergency basis. This emergency administrative regulation is necessary for compliance with 26 U.S.C. Section 415 in order for Kentucky Retirement Systems to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. Section 401(a). An emergency administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to establish the "federal taxation limitation year" required by 26 U. S.C. 415 in order to achieve compliance with the requirements of Title 26 of the U.S.C. in order to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. Section 401(a). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 2, 2008.

STEVEN L. BESHEAR, Governor
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Emergency Administrative Regulation)

105 KAR 1:400E. Federal taxation limitation year.

RELATES TO: KRS 61.645(9)(g)
STATUTORY AUTHORITY: KRS 61.645(9)(g)
EFFECTIVE: September 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.510 to 61.705, 16.510 to 16.652, and 78.510 to 78.852. This administrative regulation concerns the administration of testing contribution and benefit limits in accordance with 26 U.S.C. Section 415.

Section 1. Definitions. (1) "Fiscal year" as defined by KRS 16.505(32), 61.510(19), and 78.510(19), shall be the limitation year as set out in 26 U.S.C. Section 415 for determining contribution and benefit limits in the plans administered by the Kentucky Retirement Systems.

(2) "415(b) limit" refers to the limitation on benefits established by 26 U.S.C. 415(b).

(3) "415(c) limit" refers to the limitation on annual additions established by 26 U.S.C. 415(c).

Section 2. Basic 415 Limitations. This section applies to all plans administered by Kentucky Retirement Systems. Subject to the provisions of this regulation, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415.

Section 3. Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a KRS plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

Section 4. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a KRS plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 5. Basic 415(b) Limitation. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in 26 U.S.C. 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and subject to any additional limits that may be specified in this section. In no event shall a member's annual benefit payable in any limitation year from a KRS plan be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the regulations thereunder.

Section 6. Definition of Annual Benefit. For purposes of 26 U.S.C. 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

Section 7. Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under a KRS plan is other than the form specified in Section 6 of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the KRS plan commencing at the same annuity starting date as the form of benefit to the member; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit

applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions:

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the KRS plan for actuarial experience;

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate the in effect for the first day of the plan year with a one (1) year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the morality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

Section 8. Benefits Not Taken into Account for 415(b) Limit. (1) For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 9. Other Adjustments in 415(b) Limitation. (1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of 26 U.S.C. 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a $160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for subsection (1) of this section shall not apply.

(3) The reductions provided for in subsection (1) of this section shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section 10. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under Section 1(2) multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below ten (10) percent. The reduction provided by this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section 11. $10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415(b) limit if the benefits payable, with respect to such member under a KRS plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed $10,000 for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

Section 12. Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2003, for purposes of applying the 415(b) limit to a member with no lump sum benefit, the following will apply:

(1) A member's applicable 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;

(2) To the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the 415(b) limit;

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d), and the Treasury Regulations thereunder.

Section 13. Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by 26 U.S.C. 415(b) and applicable Treasury Regulations.

Section 14. 415(c) Limit. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of $40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100% of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, provided; however, that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another definition of compensation that is permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, is specified by a KRS plan, compensation will be defined as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under 26 U.S.C. 6041(d), 6051(a)(3), and 6052 and will be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar pay-

ments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued.

(c) Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Section 15. Service Purchases under Section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a KRS plan, then the requirements of 26 U.S.C. 415(n) will be treated as met only if:

(1) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of the 415(b) limit; or

(2) The requirements of 26 U.S.C. 415(c) are met, determined by treating all such contributions as annual additions for purposes of the 415(c) limit;

(3) For purposes of applying this section, a KRS plan will not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this subparagraph and will not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit:

(a) Recognized by a KRS plan for purposes of calculating a member's benefit under a KRS plan;

(b) Which such member has not received under a KRS plan; and

(c) Which such member may receive only by making a voluntary additional contribution, in an amount determined under a KRS plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit;

(d) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (b) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under a KRS plan.

(5) The KRS plan will fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this paragraph before the member has at least five (5) years of participation under a KRS plan.

(6) For purposes of subsection (5) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(a) Service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described paragraph (a) of this subsection of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the KRS plan.

(7) In the case of service described in subsection (6)(a), (b), or (c) of this section, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(8) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer).

(a) The limitations of subsection (5) of this section will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a KRS plan will apply to such amounts and any benefits attributable to such amounts.

(9) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a KRS plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in a KRS plan before January 1, 1998.

Section 16. Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any other provision of law to the contrary, the department may modify a request by a member to make a contribution under to a KRS plan if the amount of the contribution would exceed the limits provided in Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the department may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to subsection (1) of this section will not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c) or 415(n), the department may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 17. Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the KRS plan with respect to an amount previously refunded upon a forfeiture of service credit under the KRS plan or another governmental plan maintained by the State or a local government within the state shall not be taken into account for purposes of the 415(b) or (c) limits.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clearly identifies a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly identify a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by clearly identifying a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Members will only be able to receive retirement benefits or make contributions in accordance with federal limitations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. Section 415

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statute requires compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
105 KAR 1:420E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed new administrative regulation should be enacted on an emergency basis. This emergency administrative regulation is in accordance with the provisions of HB 1 enacted on June 27, 2008 during the 2008 Special Session of the General Assembly and is necessary to establish accounts under 26 U. S. C. Section 401(h) for the Kentucky Employees Retirement Fund, Country Employees Retirement Fund, and State Police Retirement Fund. An emergency administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to implement the new provisions of KRS 61.702, which are effective September 1, 2008, and to establish accounts pursuant to 26 U.S.C. 401(h) for the Kentucky Employees Retirement Fund, Country Employees Retirement Fund, and State Police Retirement Fund for the additional one (1) percent contribution provided for in the amendment to KRS 61.702 effective on September 1, 2008. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 2, 2008.

STEVEN L. BESHEAR, Governor
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Emergency Administrative Regulation)

105 KAR 1:420E. 401(h) Account established under 26 U.S.C. 401(h).

RELATES TO: KRS 61.701, 61.702, 61.645(9)(g)
STATUTORY AUTHORITY: KRS 61.701, 61.702, 61.645(9)(g)
EFFECTIVE: September 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. Pursuant to the provisions of KRS 61.702(b)(5), as amended by HB 1 of the 2008 Special Session and of KRS 61.645, there is hereby established effective September 1, 2008, a separate 401(h) account established under 26 U.S.C. 401(h) within each of the following: the

Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Retirement Trust Fund.

Section 1. Definitions. To be "retired" for purposes of eligibility to receive medical benefits described in 26 U.S.C. 401(h), an employee must be eligible to receive benefits under the Systems. For purposes of this section, an employee is not considered to be eligible to receive these benefits if he or she is still employed by his/her employer. A separation from employment is a condition to receiving these benefits.

(2) "Dependent" shall have the same meaning as that assigned to it by Internal Revenue Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B).

(3) "Medical expense" means expense for medical care as defined in Internal Revenue Code Section 213(e)(1).

Section 2. The purpose of the 401(h) account established under 26 U.S.C. 401(h) in each of the systems is to pay part of the subsidy for health benefits that are otherwise payable from the health insurance fund.

Section 3. The one (1) percent mandatory contribution established by HB 1 shall be deposited in the separate account of each system trust fund, respectively.

Section 4. The 401(h) accounts established under 26 U.S.C. 401(h) shall be used solely to pay medical expenses to retired employees, their spouses, and dependents.

Section 5. The health benefits are subordinate to the retirement benefits provided by the systems. (No life insurance protection is provided by any system.) This requirement will not be satisfied unless the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the systems (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the 401(h) accounts established under 26 U.S.C 401(h).

Section 6. Amounts in the 401(h) accounts established under 26 U.S.C. 401(h) are for the exclusive purpose of paying medical expenses for retirees, their spouses, and dependents. Amounts in the 401(h) accounts established under 26 U.S.C. shall not be diverted for other purposes.

Section 7. Any amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall revert to the employers upon satisfaction of all liabilities for medical benefits.

Section 8. Employees do not have an individual interest in the 401(h) accounts established under 26 U.S.C. 401(h).

Section 9. The 401(h) accounts established under 26 U.S.C. 401(h) may be commingled with the pension assets of the trust funds for investment purposes. Investment earnings shall be credited to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

Section 10. Administrative and other expenses shall be charged to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation established a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the one (1) percent mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the one (1) percent mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statues by establishing a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the one (1) percent mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the one (1) percent mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None. Members hired on or after September 1, 2008 are required by statute to make the one (1) percent contribution. This administrative regulation establishes the account to hold the one (1) percent contributions separately from the member's accounts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly in-

crease any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
105 KAR 1:430E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed new administrative regulation should be enacted on an emergency basis. This emergency administrative regulation is necessary for compliance with 26 U.S.C. 401(1)(7), (8), and (25); 26 U.S.C. 414(p) and (u); and 25 U.S.C. 503(b) in order for Kentucky Retirement Systems to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. 401(a). An emergency administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to achieve compliance with the requirements of 26 U.S.C. in order to maintain its federal tax qualified status as a defined benefit plan under 26 U.S.C. 401(a). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 2, 2008.

STEVEN L. BESHEAR, Governor
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Emergency Administrative Regulation)

105 KAR 1:430E. General Compliance with Federal Tax Laws

RELATES TO: KRS 16.505 - 16.652, 61.510 - 61.705, 78.510 - 78.852, 26 U.S.C 401(a)(7),(8), (25) 26 U.S.C. 414(d),(p),(u), 26 U.S.C. 503(b)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

EFFECTIVE: September 2, 2008

NECESSITY, FUNCTION, AND CONFORMITY: Kentucky Retirement Systems will administer the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System as qualified defined benefit plans pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code, regulations and such other Internal Revenue Code Sections as applicable. This administrative regulation sets out certain provisions necessary to comply with applicable federal law.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and 401(a)(8) for Vesting and Forfeitures. A plan member shall be 100% vested in the member's accumulated contributions at all times. In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) will be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. Effective December 12, 1994, notwithstanding any other provision of the retirement system law; contributions, benefits, and service credit with respect to qualified military service are governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. Effective as of July 1, 1989, the board may not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Retirement Systems will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by rule; such benefits will not be subject to employer discretion.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH AGENCY: September 2, 2008 at 4 p.m.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Retirement Systems' compliance with 26 U.S.C Section 401(a)(7), (8), (25); 26 U.S.C. Section 414(d), (p), (u); 26 U.S.C. Section 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky Retirement Systems' compliance with 26 U.S.C 401(a)(7), (8), (25); 26 U.S.C. 414(d), (p), (u); 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes because it establishes Kentucky Retirement Systems' compliance with 26 U.S.C 401(a)(7), (8), (25); 414(d), (p), (u); 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing Kentucky Retirement Systems' compliance with 26 U.S.C 401(a)(7), (8), (25); 414(d), (p), (u); 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C Section 401(a)(7), (8), (25); 414(d),(p),(u); 503(b).

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
301 KAR 2:083E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to prevent the importation and transportation of live cervids into Kentucky. It is necessary to promulgate this administrative regulation on an emergency basis because the normal process cannot timely accommodate the situation created by the rapid spread of Chronic Wasting Disease, a fatal disease in cervids, and other diseases affecting cervid herds in other states. In the past few years, the number of states with outbreaks of Chronic Wasting Disease has increased dramatically. There is no current technology to definitively control or eradicate Chronic Wasting Disease once it has infected wild cervids. This emergency administrative regulation will assist law enforcement in ensuring that live cervids are not brought into Kentucky. This emergency regulation will be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
BENJY KINMAN, (Acting) Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:083E. Holding and intrastate transportation of captive cervids.

RELATES TO: KRS 150.025, 150.280, 150.290, 150.725, 150.730, 150.735, 150.740

STATUTORY AUTHORITY: KRS 150.025, 150.280, 150.720, 150.735

EFFECTIVE: August 29, 2008

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transportation of wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the de-

partment to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intrastate transporting cervids in Kentucky. EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Captive cervid permit" means a permit issued by the Kentucky Department of Fish and Wildlife Resources that is required to hold cervids in captivity and does not include shooting preserves as permitted under 301 KAR 2:041.

(2) "Cervid" means a member of the family Cervidae.

(3) "Commercial captive cervid permit" means a permit for propagation and taking of captive cervids by any legal hunting or slaughter methods, which allows the permit holder to sell, offer to sell, trade, or barter captive cervids, parts thereof, or products produced by captive cervids.

(4) "Flop tag" means a commercial plastic ear tag used to identify livestock.

(5) "KDFWR" means the Kentucky Department of Fish and Wildlife Resources.

(6) "Line post" means a post in a fence that is not a corner or end post.

(7) "Noncommercial captive cervid permit" means a permit to possess captive cervids that are not intended for sale, offered for sale, traded, or bartered.

Section 2. Fencing and Holding Requirements. (1)(a) An exterior fence shall be at least eight (8) feet above ground level for its entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link.

(b) A single or double strand of barbed wire strung across the top to bring the total fence height to eight (8) feet shall be acceptable.

(c) Strands of barbed wire shall not be more than six (6) inches apart and shall not be more than five (5) inches from the top of the aforementioned fencing.

(d) Spacing between vertical wires shall not exceed six and one-half (6 1/2) inches for captive deer or species whose adult size is less than 400 pounds and twelve (12) inches for captive elk or species whose adult size is 400 pounds or more.

(e) If two (2) woven wire fences are combined, one (1) above the other, the woven wire fences shall be overlapped at least six (6) inches and firmly attached to each other at intervals no greater than three (3) feet.

(f) The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

(2) Right-of-way.

(a) The fence right-of-way shall be cleared for a distance of six

(6) feet on each side.

(b) If the fence is a property boundary fence, the fence right-of-way shall be cleared for a distance of six (6) feet on the inside only.

(c) If dead timber with a height greater than the distance of the fence exists on the permittee's property, it shall be felled.

(3)(a) Fence posts shall extend a minimum of eight (8) feet above the ground and shall be of sufficient strength to maintain the fence integrity.

(b) Pine wood posts shall be treated.

(c) Posts shall be set to a minimum depth of three (3) feet.

(d) T-posts shall be installed according to manufacturers' specifications.

(4) Line posts.

(a) Wooden line posts shall be a minimum of four (4) inches in diameter and shall not be spaced more than twenty-four (24) feet apart.

(b) Steel pipeline posts shall:

1. Be a minimum of two and three-eighths (2 3/8) inches in outside diameter;

2. Weigh a minimum of three (3) pounds per foot; and

3. Not be spaced more than twenty-four (24) feet apart.

(c) Metal "T" posts shall be a minimum of one and one-quarter (1.25) pounds per foot and shall be spaced no more than twenty (20) feet apart.

(d) If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.

(5) Corner and end posts.

(a) Wooden corner and end posts shall be a minimum of five (5) inches in diameter.

(b) Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter.

(c) Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity and shall be approved by the department prior to installation.

(6) Gates shall be:

(a) Substantially constructed to meet the specifications of the fence; and

(b) Equipped with at least one (1) latching and one (1) locking device.

(7)(a) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence.

(b) These crossings shall be adequate to prevent ingress and egress during high water.

(c) Permissible water gaps are as follows:

1. Swinging gates constructed to match the contour of the stream supported by cable or hinge (larger water gaps);

2. Pipe with swinging barrier (larger water gaps);

3. Pipe with fixed mesh barrier (smaller water gaps); and

4. Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).

(8) If topographic, natural or other conditions exist that enable cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence with additional, stronger or higher fence posts, special grading, additional wire to increase fence height or other measures to prevent escape.

(9) Maintenance. The fence shall be maintained in a gameproof condition at all times.

Section 3. Capture and Handling Facilities. (1) Each captive facility shall have an approved handling facility or device, such as a squeeze chute or crush, which facilitates inspection, handling or capture of an individual animal.

(2) If a permittee's facility does not have the handling or capture facilities listed in subsection (1) of this section, alternatives such as dart guns, tranquilizers or other devices which immobilize an animal shall be approved by the department before being used.

Section 4. Tagging. (1) Captive cervids shall be identified in accordance with the Kentucky Department of Agriculture CWD program requirements established in 302 KAR 20:066.

(2) Captive cervids over six (6) months old shall be uniquely identified with a plastic "flop" tag in at least one (1) ear that is clearly visible and identifiable.

(3) KDFWR may approve alternatives for plastic "flop" tags for bona fide zoos, nature centers, or similar educational institutions upon written request. One (1) of the following may be substituted for ear tags or other approved forms of identification:

(a) Lip or ear tattoo;

(b) Microchip; or

(c) Branding.

Section 5. Ingress and Egress. (1) The permit holder shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape.

(2) If the permit holder is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the permit holder shall report each escape to KDFWR by telephone (1-800-858-1549).

(3) The permit holder shall then file a written report (KDFWR, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits) within ten (10) days, describing what escaped and the reason for the escape.

(4) The permit holder shall also report known ingress of wild cervids into the enclosure by filing a written report to KDFWR (KDFWR, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits).

(5) The department or any peace officer may seize, capture, or destroy escaped animals or those that have ingressed if neces-

sary.

Section 6. Space Requirements. (1) For species whose adult weight is less than 400 pounds, each individual animal shall be allowed at least 1,000 square feet of space.

(2) One (1) individual animal of a species whose adult weight is 400 pounds or more, shall require at least 1,500 square feet of space, with each additional animal requiring an additional 1,000 square feet of space.

Section 7. Prohibited Species. Except for cervids legally held prior to November 12, 2002, a captive cervid permit shall not be issued for the following:

(1) Genus Cervus spp. except Cervus elaphus nelsoni;

(2) Genus Axis spp.;

(3) Roe deer (Capreolus capreolus and Capreolus pygarus); or

(4) Hybrids thereof.

Section 8. Captive Cervid Permits. (1) Permit application and issuance. An application for a new or renewed captive cervid permit shall be processed in accordance with the provisions of KRS 150.730(2) A captive cervid permit shall be valid only for the property and facility identified in the application and that is inspected as provided in Subsection (4) of this Section. A cervid shall not be moved into a new or expanded facility until the facility has been issued a captive cervid permit by the KDFWR.

(a) Zoos and other facilities fully accredited by and in good standing with the American Zoo and Aquarium Association (AZA) shall not be required to obtain or renew a KDFWR captive cervid permit. Zoos and facilities certified but not accredited by the AZA shall be required to obtain and renew a KDFWR captive cervid permit.

(b) A commercial captive cervid permit shall be required for a facility owned or leased by persons wishing to sell, offer to sell, trade, or barter captive cervids. A person shall not sell, offer to sell, trade, or barter native cervids obtained from the wild.

(c) A noncommercial captive cervid permit shall be required for a person wishing to possess captive cervids, but who do not intend to sell, offer for sale, trade, or barter cervids.

(d) All wild cervids shall be removed from the facility prior to initial inspection.

(e) A permit shall identify the species of cervids being held.

(2) Duration.

(a) A commercial captive cervid permit shall be valid for one (1) year beginning March 1 through the last day of February, and may be renewed annually upon payment of the annual fee and proof of compliance with all applicable statutes and administrative regulations.

(b) A noncommercial captive cervid permit shall be valid for three (3) years beginning March 1 through the last day of February, and may be renewed every third year upon payment of the fee and proof of compliance with all applicable statutes and administrative regulations.

(3) Transfers. A captive cervid permit may be transferred if an existing and currently permitted facility is sold or leased to a person or entity who shall maintain and operate the facility in accordance with the provisions of KRS 150.735(3).

(a) The original captive cervid permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.

(b) Prior to transfer of the permit to a new owner or lessee, the facility shall be inspected for compliance as provided by subsection (4) of this section.

(c) The purchaser or lessee of the facility shall apply for transfer of the existing captive cervid permit on a KDFWR captive cervid permit transfer application form. A copy of the deed indicating change of ownership or the lease agreement between the parties conducting the transfer shall be attached to a completed transfer application form and sent to KDFWR, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits within thirty (30) days after the inspection.

(d) A transferred captive cervid permit may be renewed by the new owner or lessee completing a captive cervid permit application.

(4) Inspections.

(a) Before a captive cervid permit is issued, renewed or transferred, each facility or facility expansion shall pass an inspection that certifies it is in compliance with all applicable statutes and administrative regulations.

(b) Upon completion of a facility or facility expansion, or if a facility is to be sold or otherwise transferred, the permit applicant or holder shall notify KDFWR to request an inspection which shall be conducted within thirty (30) days of receipt of the request.

(c) Each facility shall be inspected annually after issuance of a captive cervid permit to certify and document that the facility is in compliance with this administrative regulation.

(d) A captive cervid facility inspection form shall be completed by a KDFWR law enforcement captain, who shall then forward the original copy to KDFWR Headquarters for processing.

(5) Revocation or suspension. A person identified by a KDFWR law enforcement officer as being in violation of a Kentucky statute or administrative regulation pertaining to the holding of captive cervids shall be issued a notice of violation, in the form of a certified letter from the commissioner. A person receiving a notice of violation shall have his or her permit suspended, until which time he or she comes into compliance with all applicable statutes and administrative regulations. Failure to come into compliance with all applicable statutes and administrative regulations within sixty (60) days from the date the notice of violation is received shall result in a citation being issued. If convicted, his or her permit may be revoked and may cause the captive cervids to be immediately seized by the department. A person whose captive cervid permit is suspended or revoked shall not, without written approval from the department, transfer or expand the facility or sell, offer to sell, trade, transport, hunt or slaughter captive cervids which are housed in that facility.

(6) Appeal procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(7) Expansions.

(a) A facility may be expanded at any time and shall conform to the fencing specifications described in this administrative regulation.

(b) Facility expansions shall be adjacent and connected to the currently permitted facility.

(c) Cervids shall not be introduced into the expanded portion of a facility until that expansion has been inspected and approved by the Department as provided in subsection (4) of this section.

Section 9. Origin and Disposition of Captive Cervids. (1) Cervids obtained from the wild shall only be held by a wildlife rehabilitator permitted pursuant to 301 KAR 2:075.

(2) Captive cervids shall not be released into the wild except for wild-born cervids released by a permitted wildlife rehabilitator pursuant to 301 KAR 2:075.

(3) Wild-born cervids held in captivity for rehabilitation purposes shall not:

(a) Be housed in the same pen or otherwise housed in direct physical contact with cervids that were born in captivity; or

(b) Be housed in a pen that has ever housed cervids that were born in captivity.

Section 10. Transportation[~~Intrastate Movement~~] of Cervids. (1) Before a person may move a captive cervid within the state, an authorization number shall be obtained from the Kentucky Department of Agriculture pursuant to 302 KAR 20:066.

(2) A person transporting cervids shall have the authorization number issued by the Kentucky Department of Agriculture, and if applicable, the required health papers, in his or her possession while transporting cervids.

(3) A person shall not transport, import, or bring into the Commonwealth of Kentucky any cervid from a destination outside Kentucky.

(a) All cervids transported, imported, or brought into Kentucky from a location outside of Kentucky shall immediately be surrendered to KDFWR for testing for disease.

(b) KDFWR shall immediately cause a cervid transported, imported, or brought into Kentucky from a location outside of Ken-

tucky to be tested for diseases, including Chronic Wasting Disease (transmissible spongiform encephalopathy of cervids).

(c) If a cervid is found to have Chronic Wasting Disease, the person who transported, imported, or brought the cervid into Kentucky shall be responsible to KDFWR for all costs incurred in the investigation, response, and attempted eradication of the disease.

Section 11. Selling Cervids. A permit holder who holds a commercial captive cervid permit may sell live cervids, parts thereof, or products produced by captive cervids, if those animals were not obtained from the wild in Kentucky.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Captive Cervid Permit Application", 7/13/06 edition;

(b) "Captive Cervid Permit Transfer Application", 7/13/06 edition; and

(c) "Captive Cervid Facility Inspection Form", 7/13/06 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY KINMAN, (Acting) Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 15, 2008

FILED WITH LRC: August 29, 2008 at 3 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation regulates the holding and transportation of cervids.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to regulate the transportation and holding of cervids in order to protect native populations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation makes it clear who may or may not possess or transport cervids.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This regulation prohibits the importation and transportation into Kentucky of cervids.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to protect native cervids from Chronic Wasting Disease. Chronic Wasting Disease has spread to fourteen states and two provinces. Once it affects cervid populations in a state, it cannot be effectively eradicated with current technology. This regulation also authorizes the testing of illegally transported cervids for Chronic Wasting Disease and other diseases.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.720 and 150.740 specifically authorizes the department to issue regulations reasonably contemplated to protect Kentucky's native cervid populations from disease, including regulations related to transportation and testing.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation makes it clear that no person may bring a live cervid into Kentucky and that if they do, the animal will be seized and tested for Chronic Wasting Disease and other diseases. Such clarity facilitates the ability of conservation officers to enforce the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All citizens of the Commonwealth and any person wishing to bring a cervid into Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Citizens of the Commonwealth will have to take no action. Persons wishing to bring cervids into Kentucky will have to refrain.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the citizens of the Commonwealth. There is minimal or no cost to persons wishing to bring cervids into Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cervid populations will be preserved for the citizens of the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional cost initially to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding, if needed, is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? No

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Wildlife and Law Enforcement Divisions will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.280, 150.720, 150.735

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There will be no additional cost.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: The changes in this amendment will have negligible impact on local governments, deer hunters, and local economies, because the changes are small in scope relative to the overall deer hunting-related economic engine in Kentucky.

STATEMENT OF EMERGENCY
301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting dove, woodcock, snipe, and other migratory game birds. Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the migratory bird season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administration regulation will be filed with the Regulations Compiler by September 15, 2008.

STEVE BESHEAR, Governor
BENJI KINMAN, Interim Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:225E. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340,[~~150.360,~~] 150.603[~~(1) 150.620,~~]
STATUTORY AUTHORITY: KRS 150.025[~~(1)~~], 150.360[~~(1)~~]
EFFECTIVE: August 29, 2008
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service. EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the Tourism, Arts, and Heritage Cabinet.

Section 1. Definitions. (1) "Dove" means mourning dove and white-winged dove.
(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.
(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) A person shall not hunt a migratory game bird except on a date established in this administrative regulation.
(2) A person shall use the following time frames when hunting migratory birds:
(a) Dove beginning on:
1. September 1 for fifty-four (54) consecutive days; and
2. Thanksgiving Day for nine (9)[~~six (6)~~] consecutive days.
3. The Saturday after Christmas for seven (7) consecutive days.
(b) Woodcock beginning on the third Saturday in October for forty-five (45) consecutive days.
(c) Common snipe beginning on:
1. The third Wednesday in September for forty-seven (47) consecutive days; and
2. Thanksgiving Day for sixty (60) consecutive days.
(d) Wood duck and teal beginning on the third Wednesday in September for five (5) consecutive days.
(e) Virginia and sora rails, common moorhen and purple gallinule beginning on September 1 for seventy (70) consecutive days.
(f) Canada goose.
1. The first Saturday in September for nine (9) consecutive days;
2. Statewide except for the Ballard reporting area, and public lands in the west-central goose zone and the entire northeast goose zone which are established in 301 KAR 2:224.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:
(a) Doves:
1. Daily limit shall be fifteen (15);
2. Possession limit shall be thirty (30);
3. Eurasian collared doves may be taken in addition to mourning doves if the hunter leaves the head or wing attached while in the field.
(b) Woodcock:
1. Daily limit shall be three (3); and
2. Possession limit shall be six (6).
(c) Common snipe:
1. Daily limit shall be eight (8); and
2. Possession limit shall be sixteen (16).
(d) Virginia rails and sora rails, singly or in the aggregate:
1. Daily limit shall be twenty-five (25); and
2. Possession limit shall be twenty-five (25).
(e) Common moorhen and purple gallinules singly or in the aggregate:
1. Daily limit shall be fifteen (15); and
2. Possession limit shall be thirty (30).
(f) Wood duck and teal:
1. Daily limit shall be four (4), which shall not include more than two (2) wood ducks; and
2. Possession limit shall be eight (8), which shall not include more than four (4) wood ducks.
(g) Canada goose.
1. Daily limit two (2) birds; and
2. Possession limit four (4) birds.
(2) A person shall leave the head or one (1) fully-feathered wing attached to a migratory game bird, except a dove, being held in the field or transported.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during a time established in this section.
(1) Doves:
(a) The time between 11 a.m. and sunset during the September and October portions of the season, except if dove hunting on private land after September 1 the time between one-half (1/2) hour before sunrise and sunset; and
(b) The time between one-half (1/2) hour before sunrise and sunset during the November, December, and January segments[~~and December portions~~] of the season.
(2) Other species listed in this administrative regulation may be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:
(1) Longer than three and one-half (3 1/2) inches; or
(2) Containing:
(a) Lead shot;
(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A Wildlife Management Area owned or controlled by the department:
(a) Except as provided in this section, all provisions of this administrative regulation shall apply.

(b) A person shall not:

1. Hunt wood duck or teal on an area closed to waterfowl hunting by 301 KAR 2:222;

2. Hunt in an area marked by a sign as closed to hunting; and

3. Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on the Ballard, Boatwright, South Shore, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River, Doug Travis[~~Westvaco~~] Wildlife Management Area, Yatesville Lake Wildlife Management Area, and established Wildlife Management Area waterfowl refutes as posted by sign, shall only possess or use U.S. Fish and Wildlife Service approved nontoxic shot.

(3) Ballard Wildlife Management Area:

(a) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2:221;

(b) A person shall not hunt snipe after October 13; and

(c) A person shall not hunt woodcock.

(4) The Swan Lake Unit of Boatwright Wildlife Management Area.

(a) The body of water known as Swan Lake is closed to hunting;

(b) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2:221;

(c) A person shall not hunt snipe after October 13; and

(d) A person shall not hunt woodcock.

(5) Central Kentucky Wildlife Management Area.

(a) A person shall not hunt doves after October 13, except as provided in 301 KAR 2:221;

(b) A person shall not hunt snipe after October 13, except as provided in 301 KAR 2:221;

(c) A person shall not hunt woodcock.

(6) Grayson Lake Wildlife Management Area. A person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On or from the shores of Camp Webb or the state park.

(7) Land Between the Lakes. A person shall not hunt migratory game birds between the last Saturday in September and November 30.

(8) West Kentucky Wildlife Management Area. A person shall not hunt:[~~(a) Woodcock and snipe except on tracts 2, 3, 6, and 7; and~~

~~(b)~~] On a tract designated by a number followed by the letter "A".

(9) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch is closed to all waterfowl hunting.

(10) A person shall not hunt a migratory game bird on the main block of Robinson Forest.

Section 7. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for a dove hunting field on department property after considering the following:

(a) Terrain of the field;

(b) Topography of the field; and

(c) Providing for approximately forty (40) yards between hunters.

(2) A strategically located sign shall be posted in a field advising a hunter:

(a) Of the recommended hunter density; and

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

Approved by the Fish and Wildlife Commission June 13, 2008.

BENJY KINMAN, (Acting) Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August June 13, 2008

FILED WITH LRC: August 29, 2008 at 3 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2008–09 early migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to establish hunting season dates and bag limits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation is maintaining and managing migratory game bird conservation efforts consistent with national management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing the frameworks for migratory bird hunting seasons. This amendment reflects the federal mandate regulations for migratory bird hunting under guidance of the Migratory Bird Treaty Act. Most changes are the result of calendar shift. The mourning dove season will be changed from two to three segments to accommodate 10 additional days allowed by the federal frameworks for the 2008-09 hunting period.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for migratory game birds and waterfowl.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 63,000 migratory bird hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt migratory game birds.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all migratory game bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters.

STATEMENT OF EMERGENCY
810 KAR 1:018E

KRS 230.215(2) states in part as follows: "It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the authority forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." This emergency administrative regulation is necessary to immediately ban the use of anabolic steroids in horses that race at licensed pari-mutuel horse race meetings in Kentucky. The use of anabolic steroids undermines the principle of fair competition between equine athletes, and creates the suspicion that the outcome of races is determined by the unfair advantage gained through the use of anabolic steroids, rather than by the natural racing ability of the competing horses. Reduced public confidence in horse racing threatens to weaken one of Kentucky's most valuable and venerable industries, and jeopardizes the economic well-being of the thousands of Kentuckians who depend upon the industry for their livelihood. An ordinary administrative regulation is not sufficient to ban the use of anabolic steroids. Several leading horse racing organizations, including the Racing Medication and Testing Consortium, the Jockey Club Thoroughbred Safety Committee, the Breeder's Cup and the Graded Stakes Committee of the Thoroughbred Owners and Breeder's Association, have issued a public call for a ban to be imposed on the use of anabolic steroids by December 31, 2008. The Graded Stakes Committee has also stated that races in states which fail to adopt an effective ban before the later of January 1, 2009, or the date of a state or racetrack's first graded race in 2009, will lose their graded status. Similarly, the Breeder's Cup has announced that it will not fund stakes purses or award Breeder's Cup Challenge events to racetracks in states that fail to adopt a ban on anabolic steroids either by state regulation or racetrack house rule. Kentucky should therefore endeavor to impose a ban by the end of 2008. Kentucky's ban on the use of anabolic steroids, however, includes an initial ninety (90) day grace period intended to exempt from penalty those trainers and owners who comply in good faith with the regulation when it goes into effect. The grace period should be concluded by the end of December 2008. An ordinary administrative regulation could not go into effect, and the grace period could not be completed, by the end of December. An emergency administrative regulation is required to meet this timetable. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT D. VANCE, Secretary
ROBERT M. BECK, JR., Chairman

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Enforcement
(Emergency Amendment)

810 KAR 1:018E. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.210(9), 230.215, 230.240(2), 230.260(1), (2), (3), (6), (7), 230.265(2), 230.290(2), 230.320(1)
STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260 (3), 230.320(1)
EFFECTIVE: September 5, 2008
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Authority to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the Authority to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.
(2) "Commission [~~Authority~~] laboratory" means a laboratory chosen by the commission [~~Authority~~] to test saliva, urine, blood, or other samples or specimens from horses taken under the supervision of the commission [~~Authority~~] veterinarian.
(3) "Location under the jurisdiction of the commission [~~Authority~~]" or "Association grounds" means a track as defined in KRS 230.210(9).
(4) "Permitted NSAIDs" means the following Permitted Nonsteroidal Anti-inflammatory Drugs: Phenylbutazone, Flunixin, and Ketoprofen, if administered in compliance with Section 8 of this administrative regulation.
(5) "Positive finding" means the commission [~~Authority~~] laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample. For the drugs, medications, or substances listed in Section 2(3), 6, or 8 of this administrative regulation, it shall be necessary to have a finding in excess of the established concentration level as provided in this administrative regulation for the finding to be considered a positive finding. Positive findings also include:
(a) Substances present in the horse in excess of concentrations at which such substances could occur naturally; and
(b) Substances foreign to a horse at concentrations that cause interference with testing procedures.
(6) "Split sample" means the split sample portion of the saliva, urine, blood, or other sample or specimen taken under the supervision of the commission [~~Authority~~] veterinarian.
(7) "Split sample laboratory" means the laboratory approved by the commission [~~Authority~~] to test the split sample portion of the saliva, urine, blood, or other samples or specimens from horses taken under the supervision of the commission [~~Authority~~] veterinarian.
(8) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining sample specimens for prerace and postrace testing.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.
(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:
(a) Is a narcotic;
(b) Could serve as an anesthetic or tranquilizer;
(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or
(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.
(3) Therapeutic medications in excess of established threshold concentrations set forth in this administrative regulation shall be prohibited. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for permitted NSAIDs are set forth in Section 8 of this administrated regulation.
(4) A substance present in a horse in excess of a concentration at which the substance could occur naturally shall be prohibited if it affects the performance of the horse. It shall be the responsibility of the commission [~~Authority~~] to prove that the substance was in excess of normal concentration levels and that it affected the performance of the horse.
(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:
(a) A saliva, urine, blood, or other sample or specimen from the horse was taken under the supervision of the commission [~~Authority~~] veterinarian promptly after a horse ran in a race; and
(b) The commission [~~Authority~~] laboratory presents to the commission [~~Authority~~] a report of a positive finding.
(6) The commission [~~Authority~~] shall utilize the "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08,[~~(11-05)~~] for classification of drugs and medications violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 1:028.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [~~Authority~~] shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission [~~Authority~~].
(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide and the permitted adjunct bleeder medications as set forth in Section 6 of this administrative regulation.
(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [~~Authority~~] shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission [~~Authority~~].
(4) A veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [~~Authority~~] shall use only one (1)-time disposable needles, and shall dispose of them in a container provided by the commission [~~Authority~~] veterinarian.
(5) If a person regulated by the commission [~~Authority~~] has a medical condition which makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission [~~Authority~~], the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringes at a location under the jurisdiction of the commission [~~Authority~~] but may also establish necessary restrictions and limitations.
(6) An commission [~~Authority~~] employee may accompany a veterinarian at a location under the jurisdiction of the commission [~~Authority~~] and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antisep-

tics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [~~Authority~~].

Section 5. Antiulcer Medications. The following antiulcer medications shall be permitted to be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 mg/kg;

(2) Omeprazole (Gastrogard®): two and two-tenths (2.2) grams; and

(3) Ranitidine (Zantac®): eight (8) mg/kg.

Section 6. Furosemide and Adjunct Bleeder Medication; Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(2) The use of furosemide shall be permitted under the following circumstances:

(a) Furosemide shall be administered at a location under the jurisdiction of the commission [~~Authority~~], by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The syringe employed in the injection shall be provided immediately to the commission [~~Authority~~] veterinarian, steward, or commission [~~Authority~~] employee, if requested, to determine if there has been a violation of this administrative regulation.

(c) The furosemide dosage administered shall not exceed 500 mg, nor be less than 150 mg.

(d) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse eligible to receive furosemide pursuant to Section 7 of this administrative regulation that does not show a detectable concentration of the drug in the post-race urine, plasma, or serum shall be in violation of this administrative regulation.

(3) Up to two (2) of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

(a) Aminocaproic acid:

(b) Carbazochrome:

(c) Conjugated estrogens; and

(d) Tranexamic acid.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or licensed veterinarian determines that it would be in the horse's best interests to race with furosemide.

(b) Horses eligible for furosemide and entered to start may be monitored by an commission[~~Authority~~]-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) A horse eligible for furosemide shall receive furosemide unless the licensed trainer or licensed veterinarian submits a written request to the commission [~~Authority~~] veterinarian to no longer administer furosemide to the horse. The request shall be on forms provided by the commission [~~Authority~~] veterinarian and shall be submitted to the commission[~~Authority~~]-approved representative not later than time of entry.

(3)(a) After a horse has been determined by the commission [~~Authority~~] veterinarian to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide for a period of sixty (60) calendar days unless it is determined by the trainer or veterinarian, in consultation with the commission [~~Authority~~] veterinarian, that it is detrimental to the welfare of the horse to not be on furosemide.

(b) If a horse is determined by the commission [~~Authority~~] veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs).

(1) The use of one (1) of the following NSAIDs shall be permitted by a single intravenous injection not less than twenty-four (24) hours before post time for the race in which the horse is entered provided the concentration in the horse's sample or specimen does not exceed the following levels when tested post race:

(a) Phenylbutazone - not to exceed five (5) micrograms per milliliter of plasma or serum;

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of plasma or serum;

(c) Ketoprofen - not to exceed ten (10) nanograms per milliliter of plasma or serum.

(2) Administration of one (1) of the permitted NSAIDs or any other NSAID within twenty-four (24) hours before post time for the race in which the horse is entered shall be prohibited.

(3)(a) The use of any NSAID other than permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours before post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of one (1) microgram per milliliter of plasma or serum shall not constitute a violation of this section.

(4) A horse that has been administered a NSAID shall be subject to a saliva, urine, blood, or other sample or specimen being taken under the supervision of the Authority veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 9. Anabolic steroids. (1) The presence of exogenous anabolic androgenic steroids ("AAS") is banned in a horse that is racing. The detection of any exogenous anabolic steroid or metabolite thereof in a post race biologic sample or a prerace biologic sample after the horse has been entered shall constitute a violation.

(2) The detection in a postrace sample of any endogenous anabolic steroid or metabolite thereof where the concentration of the AAS, its metabolites, markers and/or any relevant ratio(s) as have been published in peer-reviewed scientific literature deviates from naturally occurring physiological levels shall constitute a violation. For purposes of this rule, the following are deemed to be the naturally occurring physiological levels:

(a) Boldenone (free and conjugated) in male horses other than geldings - 15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses;

(b) Nandrolone (free and conjugated):

1. In geldings - 1 ng/ml in urine;

2. In fillies and mares - 1 ng/ml in urine;

3. In male horses other than geldings - 45 ng/ml of metabolite, 5∑-estrane-3β, 17 ∑-diol in urine or a ratio in urine of 5∑-estrane-3β, 17 ∑-diol to 5∑-estrene-3β, 17 ∑-diol of >1:1;

(c) Testosterone (free and conjugated):

1. In geldings - 20 ng/ml in urine;

2. In fillies and mares - 55 ng/ml in urine;

3. Male horses: in amounts in excess of amounts existing naturally in the untreated horse at normal physiological concentrations.

(3) A horse may receive one (1) of the following medications: boldenone, nandrolone, or testosterone ("Therapeutic AAS") if each of the following conditions are met:

(a) The Therapeutic AAS must be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. Any owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration;

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant biological sample is taken from the horse;

3. The sample is tested for anabolic steroids by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and

4. The KHRC has received a report from the laboratory of a negative finding regarding the sample;

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a postrace sample will be treated as a violation even if there was a negative finding by the commission laboratory in a pre-race sample;

(d) The horse may not be entered to race until at least 60 days after the administration of the Therapeutic AAS to the horse;

(e) Procedures for administration of Therapeutic AAS:

1. Only a licensed veterinarian may administer a Therapeutic AAS; 2. Other treatment methods shall be investigated prior to consideration of the use of Therapeutic AAS and the medical records shall include documentation of the consideration of the alternative methods. The medical records for the horse shall include information documenting the necessity for the administration of the Therapeutic AAS;

3. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The Therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the Therapeutic AAS is administered;

d. The diagnosis and justification for administration of the Therapeutic AAS to the horse.

4. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication;

5. The Therapeutic AAS Administration Form shall be delivered electronically to the Equine Medical Director of the Kentucky Horse Racing Commission within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically the practitioner shall file the form with the Medical Director in person or through the mail. It is the responsibility of the submitting veterinarian to confirm receipt by the Equine Medical Director.

(4) If a horse is shipped into Kentucky from outside the state, prior to being eligible to race in Kentucky:

(a) The protocol in subsection (3) of this section shall be complied with in its entirety; or

(b)1. The trainer shall certify that he or she has had control of the horse for the sixty (60) days previous to racing and the horse has not been administered anabolic steroids; or

2. The trainer shall certify that he or she has not had control of the horse for the sixty (60) days previous to racing but shall acknowledge that he or she is responsible and accountable should a postrace test identify a violation of this administrative regulation.

(5) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for exogenous anabolic steroids or for amounts in excess of the concentrations referred to in paragraph (2) are subject to the penalties referred to in 810 KAR 1:028.

(6) The detection of more than one Therapeutic AAS or metabolite thereof in any sample in excess of the threshold level set forth in subsection (2) of this section shall constitute a violation for each anabolic steroid detected in excess of the one (1) Therapeutic AAS. There shall also be a violation if more than one Therapeutic AAS is present.

(7) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(8) A claimed horse may be tested for the presence of AAS if the claimant requests the test at the time the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the Senior State Steward. If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, as well as expenses incurred after the date of the claim and the costs of testing. If the test is negative, the claimant shall reimburse the regulatory body or the prior owner for the cost of the testing. While awaiting test results, a claimant:

(a) Shall exercise due care in maintaining and boarding a claimed horse; and

(b) Shall not materially alter a claimed horse.

(9) A postrace urine or blood sample collected from an intact male horse shall be identified to the state veterinarian and the testing laboratory.

(10) Only a licensed veterinarian may possess or administer a Therapeutic AAS.

(11) Qualified ninety (90) day grace period:

(a) The ban on use of AAS set forth in this Section shall begin immediately upon the effective date of this emergency administrative regulation. Penalties for a positive finding of AAS from a sample taken during a period of ninety (90) days following the effective date of this emergency regulation shall not be imposed, except as follows:

1. A positive test for AAS from a sample taken during the final thirty (30) days of the ninety (90) day period shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation;

2. A positive finding of AAS in a postrace sample taken during the final thirty (30) days of the ninety (90) day period, accompanied by evidence of administration within the preceding sixty (60) days, shall constitute a violation of this administrative regulation;

(b) During the ninety (90) day period, a positive test for AAS, or a suspected violation of any provision of this section, shall be subject to investigation by the commission;

(c) The trainer and owner shall be notified if there is a positive test for AAS during the last sixty (60) days of the ninety (90) day period.

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain on association grounds a test barn.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for prerace or postrace testing.

(3) The test barn shall be under the supervision and control of the commission [~~Authority~~] veterinarian.

Section 11.[~~10.~~] Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the commission [~~Authority~~] veterinarian. The commission [~~Authority~~] veterinarian shall take a sample from a horse that finished first in a race and a horse or horses designated by the stewards to determine if there has been a violation of this administrative regulation.

(2) The commission [~~Authority~~] veterinarian shall determine a minimum sample requirement for the commission [~~Authority~~] laboratory which shall be uniform for each horse.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the commission [~~Authority~~] laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the commission [~~Authority~~] laboratory shall be secured as the split sample.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission [~~Authority~~] veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing

and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission [~~Authority~~] veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer, and

2. Administered only with the permission and in the presence of the commission [~~Authority~~] veterinarian.

(d) A licensed veterinarian may attend to a horse in the test barn, but only with the permission and in the presence of the commission [~~Authority~~] veterinarian.

(6) Within five (5) business days of receipt of notification by the commission [~~Authority~~] laboratory of a positive finding, the commission [~~Authority~~] shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the commission [~~Authority~~] to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12.[~~11.~~] Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the samples for shipment to the commission [~~Authority~~] laboratory, addressed in Section 10 of this administrative regulation, until the split samples are packed and secured for shipment to the commission [~~Authority~~] laboratory. Split samples shall then be transferred to a freezer at a secure location approved and chosen by the commission [~~Authority~~].

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission [~~Authority~~] veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the time the freezer was closed, and verification that the lock was secured prior to and after opening of the freezer. An commission [~~Authority~~] veterinarian or his or her designee shall be present when the freezer is opened.

(e) Evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log.

(f) The commission [~~Authority~~] shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the specimen tested by the commission [~~Authority~~] laboratory be sent to split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission [~~Authority~~] to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer and owner of the horse receives oral or written notice of the positive findings of the commission [~~Authority~~] laboratory

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of such testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission [~~Authority~~] veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission [~~Authority~~] shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to both the person requesting the testing and the commission [~~Authority~~]; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission [~~Authority~~] shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission [~~Authority~~].

Section 13.[~~12.~~] Split Sample Chain of Custody. (1) Prior to opening the split sample freezer, the commission [~~Authority~~] shall provide a split sample chain of custody verification form. The form to be used shall be the "Split Sample Chain of Custody Form". The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer by an commission [~~Authority~~] employee after notice to the owner, trainer, or designee thereof and an commission[~~Authority~~]-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission [~~Authority~~]. A form shall be signed by both the owner's representative, if present, and the commission [~~Authority~~] representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The split sample chain of custody verification form shall be completed and signed by the representative of the commission [~~Authority~~] and the owner, trainer, or designee, if present.

(5) The commission [~~Authority~~] representative shall retain the original split sample chain of custody verification form and provide a copy for the owner, trainer, or designee, if requested.

Section 14.[~~13.~~] Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(3) Medications shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15.[~~14.~~] **Trainer Responsibility**. (1) A trainer shall be responsible for the condition of horses in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance or metabolic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission [~~Authority~~] to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission [~~Authority~~] veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring that this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the names of mares that have been bred and are entered to race;

(g) Promptly notifying the commission [~~Authority~~] veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission [~~Authority~~] to the stewards and the commission [~~Authority~~] veterinarian and ensuring compliance with Section 22 [~~21~~] of this administrative regulation governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the stewards and the commission [~~Authority~~] veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed by 810 KAR 1:024, Section 4(1)(d) and (l) and 4(2);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at least twenty (20) minutes before post time or at a time otherwise prescribed before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills such duties or the trainer is excused by the stewards pursuant to 810 KAR 1:008, Section 3(6); and

(p) Attending the collection of a saliva, urine, blood, or other sample or specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16.[~~15.~~] Licensed Veterinarians. (1) A veterinarian licensed by the commission [~~Authority~~] and practicing at a location under the jurisdiction of the commission [~~Authority~~] shall at all times be considered under the supervision of the commission [~~Authority~~] veterinarian and the stewards. A veterinarian shall report to the stewards or the commission [~~Authority~~] veterinarian a violation of this administrative regulation by a licensee.

Section 17.[~~16.~~] Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission [~~Authority~~] shall submit a KHRA -2 form, "Veterinarian Report of Horses Treated to be Submitted Daily," to the commission [~~Authority~~] veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission [~~Authority~~] veterinarian.

(2) The KHRA-2 form shall be signed by the treating practicing veterinarian.

(3) The KHRA-2 form shall be on file not later than the time prescribed on the next race day by the commission [~~Authority~~] veterinarian.

(4) The KHRA-2 form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission [~~Authority~~], or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a KHRA-2 form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission [~~Authority~~] laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 1:028.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 [~~19~~] of this administrative regulation shall report this fact immediately to the commission [~~Authority~~] veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. Such records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission [~~Authority~~] personnel.

Section 18.[~~17.~~] Veterinarian's List. (1) The commission [~~Authority~~] veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission [~~Authority~~] veterinarian, the horse is capable of competing in a race.

(3) The commission [~~Authority~~] veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission [~~Authority~~] veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a three hundred sixty-five (365) day period - thirty (30) days;

(c) Third incident within a three hundred sixty-five (365) day period - one hundred eighty (180) days;

(d) Fourth incident within a three hundred sixty-five (365) day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse shall be removed from the bleeder list only upon the direction of the commission [~~Authority~~] veterinarian, who shall certify in writing to the stewards the recommendation for removal.

(8) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission [~~Authority~~] veterinarian.

Section 19.[~~18.~~] Distribution of Purses, Barn Searches, and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the commission [~~Authority~~] laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance, or metabolic derivative in the saliva, urine, blood, body fluids, or other sample or specimen taken from a horse.

(2) The distribution of purse money prior to the issuance of a

final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission [~~Authority~~] laboratory issues a positive finding, the Executive Director of the commission [~~Authority~~] or the stewards shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the commission [~~Authority~~] detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission [~~Authority~~] laboratory and split sample laboratory, the remaining portion of the samples at the commission [~~Authority~~] laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission [~~Authority~~]. If a report indicating a positive finding has been issued, the commission [~~Authority~~] shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission [~~Authority~~] may freeze samples.

Section 20.[~~19.~~] Other Prohibited Practices. In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited:

(1) The possession or use of a drug, medication, or substance by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission [~~Authority~~]:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission [~~Authority~~] or its designee, the possession or use of a drug, medication, or substance that has never been approved by the U.S. Food and Drug Administration (USFDA) for use in humans or animals at a location under the jurisdiction of the commission [~~Authority~~]. The commission [~~Authority~~] shall determine whether to grant prior permission after consultation with the Equine Research Drug Council.

(3) The possession or use of the following blood-doping agents at a location under the jurisdiction of the commission [~~Authority~~]:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin;

(d) Hemopure; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) The practice, administration, or application of a treatment, procedure, or therapy which may:

(a) Endanger the health or welfare of a horse, or

(b) Endanger the safety of a rider.

(5) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission [~~Authority~~] shall administer the treatment;

(c) The commission [~~Authority~~] veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission [~~Authority~~] veterinarian on the prescribed form within twenty-four (24) hours of treatment. The form to be used is the "Kentucky Horse Racing Authority Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy".

(6) The administration of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse within twenty-four (24) hours prior to post time for the race in which the horse is entered.

(7) Without the prior permission of the commission [~~Authority~~] veterinarian or his or her designee, based on standard veterinary practice for recognized conditions, the use of a nasogastric tube which is longer than six (6) inches for the administration of any substance within twenty-four (24) hours prior to the post time of a race in which the horse is entered.

(8) A serum total carbon dioxide (TCO_2) level that exceeds 37.0 millimoles per liter in a horse; except no violation shall exist if the TCO_2 level is found to be normal for the horse following the quarantine procedure set forth in Section 20 of this administrative regulation.

(9) Possession or use of a blood gas machine by a person other than an authorized representative of the commission [~~Authority~~] at a location under the jurisdiction of the commission [~~Authority~~]; and

(10) Possession or use of a shock wave therapy machine or radial pulse wave therapy machine by anyone other than a veterinarian licensed by the commission [~~Authority~~] at a location under the jurisdiction of the commission [~~Authority~~].

Section 21.[~~20.~~] TCO_2 Testing and Procedures. (1)(a) The stewards or commission [~~Authority~~] veterinarian may order the prerace or post-race collection of blood samples from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as selected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Prerace testing shall be done at the reasonable time, place, and manner directed by the commission [~~Authority~~] veterinarian.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO_2 concentration in the serum or plasma of the horse. If the commission [~~Authority~~] laboratory determines that the TCO_2 level exceeds thirty-seven (37) millimoles per liter, the Executive Director of the commission [~~Authority~~] shall be informed of the positive finding.

(d) Split Sample testing for TCO_2 may be requested by an owner or trainer in advance of the collection of the samples by the commission [~~Authority~~] veterinarian; however, the collection and testing of a split sample for TCO_2 testing shall be done at a reasonable time, place, and manner directed by the commission [~~Authority~~] veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO_2 is determined to exceed thirty-seven (37) millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission [~~Authority~~] veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by an commission [~~Authority~~] representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission [~~Authority~~] veterinarian is satisfied that the horse's level of TCO_2, as registered in the original test, is physiologically normal for that horse, the stewards shall permit the horse to race. In such case, the stewards may require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO_2 level is physiologically normal.

Section 22.[~~21.~~] Postmortem Examination. (1) The commission [~~Authority~~] veterinarian may require a postmortem examination by a qualified designee of the commission [~~Authority~~] of a horse that dies or is destroyed at a location under the jurisdiction of the commission [~~Authority~~].

(2) The commission [~~Authority~~] or its designee shall coordinate

with the trainer or owner to determine and address any insurance requirements.

(3) The commission [~~Authority~~] veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The commission [~~Authority~~] veterinarian may submit saliva, blood, urine, and other samples and specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The commission [~~Authority~~] shall bear the cost of an autopsy that is required by the commission [~~Authority~~].

(4) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 23.[~~22.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinarian Report of Horses Treated to be Submitted Daily, KHRA- 2", 8/97;

(b) "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08[~~(11/05)~~];

(c) "Kentucky Horse Racing Authority Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", 12/05; [~~and~~]

(d) "Split Sample Chain of Custody Form", 12/05; and

(e) "Therapeutic AAS Administration Form", 9/08.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission [~~Authority~~], 4063 Ironworks Parkway, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT BECK, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the use of medications in horses on race days at pari-mutuel thoroughbred horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all horses engaged in pari-mutuel horse racing in the Commonwealth of Kentucky, as regulated by the Kentucky Horse Racing Commission pursuant to KRS Chapter 230, compete on a level playing field, and that no horse enjoys an unfair advantage due to the use of performance-enhancing drugs or other prohibited medications.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.240(2) states in part as follows: "The authority shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." This regulation furthers the statutory goal above by setting forth the rules and prohibitions relating to the use of race day medications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative will clarify exactly which race day medications can be taken and in what amounts. It also establishes the procedures to be used for taking blood and urine samples from race horses, and the procedures to be used in testing the samples for prohibited drugs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation creates an extensive new section banning the use of anabolic steroids, and setting forth the terms of a grace period during which penalties for the detection of anabolic steroids will be abated or mitigated somewhat.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ban the use of anabolic steroids, in order to ensure that horses racing in the Commonwealth of Kentucky compete on an equal basis with one another, without the use of anabolic steroids.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adding anabolic steroids to the prohibitions against improper drug use set forth 810 KAR 1:018. KRS 230.240(2) specifically grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the use of drugs in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by adding a more detailed provision concerning steroids to the comprehensive provisions regulating drug use already contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission currently licenses as thoroughbred racing participants 4,905 owners, 364 trainers and assistant trainers, and 100 veterinarians. These are the individuals who will be primarily affected by the regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Owners, trainers, and veterinarians will be required to comply with the ban on the use of anabolic steroids in horse racing.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No cost.

(b) On a continuing basis. No cost.

What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Horse Racing Commission already

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No significant increase in fees or funding will be required to implement the change. It is possible the Commission may in future hire an additional test barn worker to aid in sample collection in certain situations.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by the amendment to this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment; the ban on steroids applies to all participants in racing on an even basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, as the agency promulgating this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.240(2), which grants the commission the authority to promulgate regulations concerning the use of medications in race horses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may the commission to hire an additional detention barn worker to collect blood and urine samples in some situations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue

will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Exact amount undetermined.

(d) How much will it cost to administer this program for subsequent years? Exact amount undetermined.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
810 KAR 1:028E

KRS 230.215(2) states in part as follows: "It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the authority forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." This emergency administrative regulation is necessary to immediately ban the use of anabolic steroids in horses that race at licensed pari-mutuel horse race meetings in Kentucky. The use of anabolic steroids undermines the principle of fair competition between equine athletes, and creates the suspicion that the outcome of races is determined by the unfair advantage gained through the use of anabolic steroids, rather than by the natural racing ability of the competing horses. Reduced public confidence in horse racing threatens to weaken one of Kentucky's most valuable and venerable industries, and jeopardizes the economic well-being of the thousands of Kentuckians who depend upon the industry for their livelihood. An ordinary administrative regulation is not sufficient to ban the use of anabolic steroids. Several leading horse racing organizations, including the Racing Medication and Testing Consortium, the Jockey Club Thoroughbred Safety Committee, the Breeder's Cup and the Graded Stakes Committee of the Thoroughbred Owners and Breeder's Association, have issued a public call for a ban to be imposed on the use of anabolic steroids by December 31, 2008. The Graded Stakes Committee has also stated that races in states which fail to adopt an effective ban before the later of January 1, 2009, or the date of a state or racetrack's first graded race in 2009, will lose their graded status. Similarly, the Breeder's Cup has announced that it will not fund Stakes purses or award Breeder's Cup Challenge events to racetracks in states that fail to adopt a ban on anabolic steroids either by state regulation or racetrack house rule. Kentucky should therefore endeavor to impose a ban by the end of 2008. Kentucky's ban on the use of anabolic steroids, however, includes an initial ninety (90) day grace period intended to exempt from penalty those trainers and owners who comply in good faith with the regulation when it goes into effect. The grace period should be concluded by the end of December 2008. An ordinary administrative regulation could not go into effect, and the grace period could not be completed, by the end of December. An emergency administrative regulation is required to meet this timetable. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT D. VANCE, Secretary
ROBERT M. BECK, JR., Chairman

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Enforcement
(Emergency Amendment)

810 KAR 1:028E. Disciplinary measures and penalties.

RELATES TO: KRS 230.215(2), 230.260(1), (3), 230.265(2), 230.290(2), 230.300, 230.320(1), 230.361(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3)

EFFECTIVE: September 5, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) authorizes the Authority to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the disciplinary powers and duties of the stewards and the commission [~~Authority~~].

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that such other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked pursuant to this administrative regulation pertaining to:

(a) A violation involving Class A drugs;

(b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;

(c) A third or subsequent violation of 810 KAR 1:018 for an excessive TCO_2 level; or

(d) A third or subsequent violation of 810 KAR 1:018 involving shock wave, or blood gas machines.

(8) "Schedule" means the Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule.

(9) "Withdrawal guidelines" means "The Kentucky Horse Racing Authority Withdrawal Guidelines."

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR shall be adjudicated in accordance with 810 KAR 1:029 and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a prerace or postrace sample that is not classified in the schedule, the commission [~~Authority~~] may establish a classification after consultation with either or both of the Racing Commissioners International and the Racing and Medication Testing Consortium or their successor.

(3) Stewards and the commission [~~Authority~~] shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A

licensee may provide evidence to the stewards or the commission [~~Authority~~] that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) The commission [~~Authority~~] has the authority to suspend or revoke the commission[~~Authority~~]-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked or a horse that has been suspended, shall be denied access to locations under the jurisdiction of the commission [~~Authority~~] during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in Kentucky racing days.

(7) A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission [~~Authority~~]. If an appeal is pending, that fact shall be so noted.

(8) To protect the racing public and ensure the integrity of racing in the commonwealth, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(9) A veterinarian who administers, or is a party to, or facilitates the administration of, or is found to be responsible for the administration of a Class A drug to a horse, in violation of 810 KAR 1:018, Section 19, or who has engaged in prohibited practices in violation of 810 KAR 1:018, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(11) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission [~~Authority~~] may charge the person with only one (1) offense, if the person demonstrates that he or she was not aware that overages were being administered, because the positive test results showing such overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission [~~Authority~~].

Section 3. Prior Offenses. (1) Prior offenses occurring in Kentucky shall be considered, in accordance with the requirements of this section, by the stewards and by the commission [~~Authority~~] in assessing penalties. Prior offenses occurring in other racing jurisdictions may be considered by the stewards and the commission [~~Authority~~] in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.

(2) Prior offenses occurring before September 7, 2005 shall not be considered.

(3) Prior offenses involving a Class C drug or Class D drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005 and within one (1) year of the offense for which the person stands charged.

(4) Prior offenses involving a Class A drug or Class B drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005.

(5) Prior offenses shall not be considered for purposes of enhancing a penalty if the drug, medication, or substance that was the subject of the prior offense was of a lower class, pursuant to the schedule, than the drug, medication, or substance that is the subject of the offense for which the person stands charged.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations.

(1) Class A drug. A licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to three (3) years as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $5,000 to $10,000; or

b. Forfeiture of purse money won.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) years to five (5) years as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $10,000 to $20,000; or

b. Forfeiture of purse money won.

(c) For a third offense:

1. A suspension or revocation of licensing privileges for not less than five (5) years as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. A revocation of licensing privileges may be permanent. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $20,000 to $50,000; or

b. Forfeiture of purse money won.

(d) Suspension of owner's horse. A horse administered a Class A drug in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense, a suspension from zero to sixty (60) days;

2. For a second offense, a suspension from sixty (60) to 180 days; or

3. For a third offense, a suspension from 180 to 240 days.

(2) Class B drug. A licensee who administers, or is a party to or responsible for administering a Class B drug to a horse, in violation of 810 KAR 1:018 or more than one (1) NSAID to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to sixty (60) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $500 to $1,000; or

b. Forfeiture of purse money won.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from one (1) month to six (6) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked for six (6) months.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to

any or all of the following actions:

a. Payment of a fine of $1,000 to $2,500; or

b. Forfeiture of purse money won.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from two (2) months to one (1) year as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked for six (6) months or longer.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $2,500 to $5,000; or

b. Forfeiture of purse money won.

(d) Suspension of owner's horse. A horse administered a Class B drug, in violation of 810 KAR 1:018, or more than one (1) NSAID, in violation of 810 KAR 1:018, shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense, no suspension;

2. For a second offense, a suspension from zero to sixty (60) days; or

3. For a third offense, a suspension from sixty (60) to 180 days.

(3) Class C drug or overage of one (1) permitted NSAID.

(a)The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection:

1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 810 KAR 1:018; and

2. A licensee who is responsible for an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018:

a. Phenylbutazone (>10 mcg/ml);

b. Flunixin (>100 ng/ml); or

c. Ketoprofen (>50 ng/ml).

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero to ten (10) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $250 to $500; or

b. Forfeiture of purse money won.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $500 to $1,000; or

b. Forfeiture of purse money won.

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $1,000 to $2,500; or

b. Forfeiture of purse money won.

(4) Certain overages of Permitted NSAIDs and Furosemide Violations.

(a) The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection:

1. Notwithstanding Section 4(3) of this administrative regulation, a licensee who administers, or is a party to or responsible for administering an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018:

a. Phenylbutazone (5.1-9.9 mcg/ml);

b. Flunixin (21-99ng/ml); or

c. Ketoprofen (11-49 ng/ml);

2. A licensee who administers, or is party to or responsible for administering an overage of Furosemide in an amount in excess of 100 ng/ml; and

3. A licensee who has not administered furosemide when the horse has been identified as a horse on furosemide.

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero to five (5) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $250 to $500.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from zero days to ten (10) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $500 to $1,000;

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from zero days to fifteen (15) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $1,000 to $2,500; or

b. Forfeiture of purse money won.

(5) Class D Drug.

(a) The penalty for a first violation involving a Class "D" drug shall be a written warning to the trainer and owner.

(b) For multiple violations involving a Class "D" drug the licensee may be subject to a suspension of licensing privileges from zero days to five (5) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(c) The licensee whose licensing privileges may be suspended, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension by agreeing to payment of a fine of no more than $250.

Section 5. TCO2 penalties. A person who violates or causes the violation of Section 19 (6), (7) or (8) of 810 KAR 1:018 shall be subject to the following penalties:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of $1,000 to $1,500; or

2. Forfeiture of purse money won.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended

or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of $1,500 to $3,000; or

2. Forfeiture of purse money won.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of $3,000 to $5,000; or

2. Forfeiture of purse money won.

(4) For subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to forfeiture of purse money won.

(5) Suspension of owner's horse. A horse that registers a TCO2 level in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:

(a) For a first offense, no suspension;

(b) For a second offense, a suspension from fifteen (15) days to sixty (60) days;

(c) For a third offense, a suspension from sixty (60) days to 180 days; and

(d) For a fourth offense, a suspension from eight (8) months to one (1) year.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes the violation of Section 19 (5) (a), 19(5)(b), 19(9) or 19(10) of 810 KAR 1:018 shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from one (1) month to three (3) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $5,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) months to six (6) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~]may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $5,000 to $10,000.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from six (6) months to one (1) year as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $10,000 to $20,000.

Section 7. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission [~~Authority~~];

(b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission [~~Authority~~].

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for such expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 8. Other Disciplinary Measures. (1) A person who violates 810 KAR 1:018, Section 6, regarding furosemide and adjunct bleeder medication use on race day shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 810 KAR 1:018, Section 8(3) for administering more than one (1) permissible Non-Steroidal Anti-Inflammatory Drug (NSAID) shall be treated the same as a person who has committed a Class B drug violation.

(3) A person who violates 810 KAR 1:018, Section 19(2) shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission [~~Authority~~] after consultation with the Equine Research Drug Council.

(4) A person who violates 810 KAR 1:018, Section 19(3) shall be treated the same as a person who has committed a Class A drug violation.

Section 9. Disciplinary Measures by Stewards. (1) Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case; or

(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the ho-

nesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the stewards may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed $5,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 10. (1) Disciplinary measures by the commission [~~Authority~~]. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the commission [~~Authority~~] may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation; or

(c) Eject or exclude persons from association grounds for a length of time the commission [~~Authority~~] deems necessary.

(2) The licensee whose licensing privileges may be suspended or revoked and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08[~~11/05~~]; and

(b) "The Kentucky Horse Racing Authority Withdrawal Guidelines", 09/08[~~2/06 is hereby incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission [~~Authority~~], 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

[~~Section 12. The requirements, implementation, and enforcement of this emergency administrative regulation shall begin on September 7, 2005.~~]

ROBERT BECK, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth penalties for the prohibited use of medications in horses on race days at pari-mutuel horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all horses engaged in pari-mutuel horse racing in the Commonwealth of Kentucky, as regulated by the Kentucky Horse Racing Commission pursuant to KRS Chapter 230, compete on a level playing field, and that no horse enjoys an unfair advantage due to the use of performance-enhancing drugs or other prohibited medications.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.240(2) states in part as follows: "The authority shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." This regulation furthers the statutory goal above by setting forth the rules and prohibitions relating to the use of race day medications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulations provides the penalty structure for the prohibited use of race day medications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment amends the "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule" to place anabolic steroids in the "B" penalty range, rather than the "C" range as previously classified. This amendment alters the "Kentucky Horse Racing Authority Withdrawal Guidelines" to increase the withdrawal period for anabolic steroids from 72 hours to 60 days.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more effectively ban the use of anabolic steroids in racing, by increasing the penalty range and the withdrawal period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adjusting the penalty range and withdrawal times for the use of anabolic steroids in horse racing. KRS 230.240(2) specifically grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the use of drugs in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by prescribing appropriate penalty ranges and withdrawal guidelines concerning the use of anabolic steroids.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission currently licenses as thoroughbred racing participants 4905 owners, 364 trainers and assistant trainers, and 100 veterinarians. These are the individuals who will be primarily affected by the regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Owners, trainers, and veterinarians will be required to comply with the ban on the use of anabolic steroids in horse racing.

(5)Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No cost.

(b) On a continuing basis. No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Horse Racing Commission already has sufficient funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by the amendment to this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment; the ban on steroids applies to all participants in racing on an even basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: John L. Forgy

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse

Racing Commission, as the agency promulgating this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.240(2), which grants the commission the authority to promulgate regulations concerning the use of medications in race horses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may require an additional detention barn worker to collect blood and urine samples in some situations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Exact amount undetermined.

(d) How much will it cost to administer this program for subsequent years? Exact amount undetermined.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
811 KAR 1:090E

KRS 230.215(2) states in part as follows: "It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth." This emergency administrative regulation is necessary to immediately ban the use of anabolic steroids in horses that race at licensed pari-mutuel horse race meetings in Kentucky. The use of anabolic steroids undermines the principle of fair competition between equine athletes, and creates the suspicion that the outcome of races is determined by the unfair advantage gained through the use of anabolic steroids, rather than by the natural racing ability of the competing horses. Reduced public confidence in horse racing threatens to weaken one (1) of Kentucky's most valuable and venerable industries, and jeopardizes the economic well-being of the thousands of Kentuckians who depend upon the industry for their livelihood. An ordinary administrative regulation is not sufficient to ban the use of anabolic steroids. Several leading horse racing organizations, including the Racing Medication and Testing Consortium, the Jockey Club Thoroughbred Safety Committee, the Breeder's Cup and the Graded Stakes Committee of the Thoroughbred Owners and Breeder's Association, have issued a public call for a ban to be imposed on the use of anabolic steroids by December 31, 2008. The Graded Stakes Committee has also stated that races in states which fail to adopt an effective ban before the later of January 1, 2009, or the date of a state or racetrack's first graded race in 2009, will lose their graded status. Similarly, the Breeder's Cup has announced that it will not fund Stakes purses or award Breeder's Cup Challenge events to racetracks in states that fail to adopt a ban on anabolic steroids either by state administrative regulation or racetrack house rule. Kentucky should therefore endeavor to impose a ban by the end of 2008. Kentucky's ban on the use of anabolic steroids, however, includes an initial ninety (90) day grace period intended to exempt from penalty those trainers and owners who comply in good faith with the regulation when it goes into effect. The grace period should be concluded by the end of December 2008. An ordinary administrative regulation could not go into effect, and the grace period could not be completed, by the end of December. An emergency administrative regulation is required to meet this timetable. The ban should include standardbred racing as well. It is important that Kentucky's rules regarding medications remain uniform, and the Red Mile and the Kentucky Harness Horsemen's Association have called for a ban on the use of anabolic steroids in standardbred racing. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed simultaneously with the emergency administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT D. VANCE, Secretary
ROBERT M. BECK, JR., Chairman

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Enforcement
(Emergency Amendment)

811 KAR 1:090E. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 230.240(2), 230.260(1), 230.265(2), 230.290(2), (3), 230.310, 230.320(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3), (6), 230.320(1)

EFFECTIVE: September 5, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(3), and 230.320 authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibility relating to the health and fitness of horses.

Section 1. Definitions. (1) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(2) "Authority laboratory" means a laboratory chosen by the commission to test saliva, urine, blood, or other samples or specimens from a horse taken under the supervision of the commission veterinarian.

(3) "Location under the jurisdiction of the commission" or "Association grounds" means a track as defined in KRS 230.210(9).

(4) "Permitted NSAIDs" means the following Permitted Nonsteroidal Anti-Inflammatory Drugs: Phenylbutazone and flunixin, if administered in compliance with Section 8 of this administrative regulation.

(5) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample.

(a) For the drugs, medications or substances listed in Section 2(3), 6, or 8 of this administrative regulation, a positive finding means a finding in excess of the established concentration level prescribed in those sections.

(b) Positive findings also include:

1. Substances present in the horse in excess of concentrations at which the substances might occur naturally; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(6) "Split sample" means the split sample portion of the saliva, urine, blood, or other sample or specimen taken under the supervision of the commission veterinarian.

(7) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the saliva, urine, blood, or other samples or specimens taken from a horse under the supervision of the commission veterinarian.

(8) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining sample specimens for prerace and postrace testing.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as specifically permitted in this administrative regulation, while participating in a race (betting or nonbetting), qualifying race, time trial, or official workout, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications in excess of established threshold concentrations set forth in this administrative regulation shall be prohibited. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for phenylbutazone and flunixin are set forth in Section 8 of this administrative regulation.

(4) A substance present in a horse in excess of a concentration at which the substance could occur naturally shall be prohibited. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or nonbetting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolic derivative thereof, prohibited by this section, if:

(a) A saliva, urine, blood, or other sample or specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or nonbetting), qualifying race, time trial, or official workout; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the "Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule (09/08)[~~(11/05)~~]" for classification of drugs and medications violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 1:095.

Section 3. Treatment Restrictions. (1) Except as set forth in Section 4 of this administrative regulation, or the oral administration of phenylbutazone as set forth in Section 8 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide and the one (1) adjunct bleeder medication set forth in Section 6 of this administrative regulation.

(3) Except as set forth in subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall use only single-use disposable needles, and shall dispose of them in a container provided by the commission.

(5) If a person regulated by the commission, has a medical condition which makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The judges may grant approval for a person to possess and use a needle and syringes at a location under the jurisdiction of the commission, but may establish necessary restrictions and limitations.

(6) An commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission.

Section 5. Anti-Ulcer Medications. The following anti-ulcer medications shall be permitted to be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 mg/kg;

(2) Omeprazole (Gastrogard®): 2.2 grams;

(3) Ranitidine (Zantac®): 8 mg/kg; and

(4) Sulcrafate: 2-4 grams.

Section 6. Furosemide and Adjunct Bleeder Medication Use on Raceday. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race (betting or nonbetting), qualifying race, time trial, or official workout.

(2) Only the commission veterinarian or a licensed veterinarian approved by the commission may administer furosemide prior to a race (betting or nonbetting), qualifying race, time trial, or official workout. If the furosemide is administered by a licensed veterinarian other than the commission veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian.

(3) The use of furosemide shall be permitted under the following circumstances:

(a) Furosemide shall be administered on the grounds of a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b)The syringe employed in the injection shall be provided immediately to the commission veterinarian, judge or commission employee, if requested, to determine if there has been a violation of this administrative regulation.

(c) The furosemide dosage administered shall not be less than 100 mg and shall not exceed 250 mg.

(d) The specific gravity of postrace urine samples shall not be below 1.010. If the specific gravity of the postrace urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse eligible to receive furosemide and entered to race, pursuant to Section 7 of this administrative regulation, that does not show a detectable concentration of the drug in the postrace urine, plasma, or serum shall be in violation of this administrative regulation.

(f) The cost of administering furosemide shall be determined by

the commission based on prevailing costs of veterinary services and supplies and shall be prominently posted in the racing office.

(g) The cost of administering furosemide shall be borne by the trainer.

(4) One of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

(a) Aminocaproic acid:

(b) Carbazochrome:

(c) Conjugated estrogens; or

(d) Tranexamic acid.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to qualify with furosemide if the commission veterinarian or a licensed veterinarian approved by the commission determines that it would be in the horse's best interest to race with furosemide.

(b) A horse eligible for furosemide and entered to start may be monitored by an commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2)(a) A horse determined to be a bleeder by the commission veterinarian or a licensed veterinarian approved by the commission shall not be eligible to qualify for five (5) days after determination for eligibility to receive furosemide has been made.

(b) A horse that has been placed on the furosemide list shall perform in a qualifying race with furosemide and meet the standards of the meeting before being eligible to race.

(c) A horse eligible for furosemide shall receive furosemide unless the licensed veterinarian submits a written request to the commission veterinarian to no longer administer furosemide to the horse. The request shall be on the form "Certificate of Termination of Lasix KHRA 100-5 (8/06)" and shall be submitted to the commission veterinarian.

(d) A horse that has been determined eligible to receive furosemide shall not have the administration of furosemide terminated in a pari-mutuel race until the horse has performed in a qualifying race without the use of furosemide.

(3)(a) After a horse has been determined by the commission veterinarian to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide for a period of sixty (60) calendar days unless it is determined by the commission veterinarian that it is detrimental to the welfare of the horse to not be on furosemide. The commission veterinarian shall complete the form "Declaration to Remove a Horse from the administration of Furosemide KHRA 100-1 (8/06)" if the commission veterinarian determines that the horse is no longer required to receive furosemide.

(b) If a horse is determined by the commission veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.

Section 8. Permitted Non-steroidal Anti-Inflammatory Drugs (NSAIDs) (1) The use of one (1) of the NSAIDs listed in this section shall be permitted not less than twenty-four (24) hours prior to post time for the race for which the horse is entered provided the concentration in the horse's sample or specimen does not exceed the levels set forth in this section when tested post race.

(2) Phenylbutazone.

(a) A single oral or intravenous administration of phenylbutazone shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The phenylbutazone dosage administered shall not exceed:

1. Two (2) grams (g) oral; or

2. Two (2) grams (g) intravenous.

(c) A post race sample of phenylbutazone reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be considered a violation of this section.

(d) The oral administration of phenylbutazone may be performed by the trainer.

(3) Flunixin.

(a) A single intravenous administration of flunixin shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The flunixin dosage administered shall not exceed 500 mg.

(c) A post race sample of flunixin reported to exceed a level of twenty (20) nanograms per milliliter of blood plasma shall be considered a violation of this section.

(4) Ketoprofen.

(a) A single intravenous administration of ketoprofen shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The ketoprofen dosage administered shall not exceed one (1) gram.

(c) A post race sample of ketoprofen reported to exceed a level of ten (10) nanograms per milliliter of blood plasma shall be considered a violation of this section.

(5) Phenylbutazone, flunixin or ketoprofen, injected intravenously, shall be administered by a licensed veterinarian approved by the commission. If there is no licensed veterinarian reasonably available, the commission veterinarian may administer the injection with the prior approval of the Chief Judge.

(6) Nonsteroidal anti-inflammatory drugs other than phenylbutazone, flunixin, or ketoprofen shall be prohibited.

(7) A horse that has been administered phenylbutazone, flunixin, or ketoprofen shall be subject to a saliva, urine, blood, or other sample or specimen taken under the supervision of the commission veterinarian to determine the quantitative phenylbutazone, flunixin, or ketoprofen level present in the horse or the presence of other drugs in the horse.

(8) In a horse in which phenylbutazone has been administered according to subsection (2) of this section, flunixin and ketoprofen are prohibited. In a horse in which flunixin has been administered according to subsection (3) of this section, phenylbutazone and ketoprofen are prohibited. In a horse in which ketoprofen has been administered according to subsection (4) of this section, phenylbutazone and flunixin are prohibited.

(9) A finding of phenylbutazone below a concentration of one (1) microgram per milliliter of plasma or serum shall not constitute a violation of subsection (8) of this section.

Section 9. Anabolic Steroids. (1) The presence of exogenous anabolic androgenic steroids ("AAS") is banned in a horse that is racing. The detection of any exogenous anabolic steroid or metabolite thereof in a postrace biologic sample or a prerace biologic sample after the horse has been entered shall constitute a violation.

(2) The detection in a postrace sample of any endogenous anabolic steroid or metabolite thereof where the concentration of the AAS, its metabolites, markers and/or any relevant ratio(s) as have been published in peer-reviewed scientific literature deviates from naturally occurring physiological levels shall constitute a violation. For purposes of this administrative regulation, the following are deemed to be the naturally occurring physiological levels:

(a) Boldenone (free and conjugated) in male horses other than geldings - 15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses.

(b) Nandrolone (free and conjugated):

1. In geldings - 1 ng/ml in urine;

2. In fillies and mares - 1 ng/ml in urine;

3. In male horses other than geldings - 45 ng/ml of metabolite, 5∑-estrane-3β, 17 ∑-diol in urine or a ratio in urine of 5∑-estrane-3β, 17 ∑-diol to 5∑-estrene-3β, 17 ∑-diol of >1:1.

(c) Testosterone (free and conjugated):

1. In geldings - 20 ng/ml in urine;

2. In fillies and mares - 55 ng/ml urine;

3. Male horses: in amounts in excess of amounts existing naturally in the untreated horse at normal physiological concentrations.

(3) A horse may receive one of the following medications: boldenone, nandrolone, or testosterone ("Therapeutic AAS") if each of the following conditions are met:

(a) The Therapeutic AAS must be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. Any owner or trainer who is uncertain about whether a particular purpose is considered to be thera-

peutic shall consult with the commission prior to administration;

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant biological sample is taken from the horse;

3. The sample is tested for anabolic steroids by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and

4. The KHRC has received a report from the laboratory of a negative finding regarding the sample;

(c) A report from the commission laboratory of a negative finding in a prerace sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a postrace sample will be treated as a violation even if there was a negative finding by the commission laboratory in a prrace sample;

(d) The horse may not be entered to race until at least sixty (60) days after the administration of the Therapeutic AAS to the horse;

(e) Procedures for administration of Therapeutic AAS.

1. Only a licensed veterinarian may administer a Therapeutic AAS.

2. Other treatment methods shall be investigated prior to consideration of the use of Therapeutic AAS and the medical records shall include documentation of the consideration of the alternative methods. The medical records for the horse shall include information documenting the necessity for the administration of the Therapeutic AAS.

3. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The Therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the Therapeutic AAS is administered;

d. The diagnosis and justification for administration of the Therapeutic AAS to the horse.

4. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

5. The Therapeutic AAS Administration Form shall be delivered electronically to the Equine Medical Director of the Kentucky Horse Racing Commission within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically, the practitioner shall file the form with the Medical Director in person or through the mail. It is the responsibility of the submitting veterinarian to confirm receipt by the Equine Medical Director.

(4) If a horse is shipped into Kentucky from outside the state, prior to being eligible to race in Kentucky:

(a) The protocol in subsection (3) of this section shall be complied with in its entirety; or

(b)1. The trainer shall certify that he or she has had control of the horse for the sixty (60) days previous to racing and the horse has not been administered anabolic steroids; or

2. The trainer shall certify that he or she has not had control of the horse for the sixty (60) days previous to racing but shall acknowledge that he or she is responsible and accountable should a postrace test identify a violation of this administrative regulation.

(5) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for exogenous anabolic steroids or for amounts in excess of the concentrations referred to in subsection (2) of this section are subject to the penalties referred to in 810 KAR 1:028.

(6) The detection of more than one Therapeutic AAS or metabolite thereof in any sample in excess of the threshold level set forth in subsection (2) of this section shall constitute a violation for each anabolic steroid detected in excess of the one Therapeutic AAS. There shall also be a violation if more than one Therapeutic AAS is present.

(7) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(8) A claimed horse may be tested for the presence of AAS if the claimant requests the test at the time the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the Senior State Steward. If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, as well as expenses incurred after the date of the claim and the costs of testing. If the test is negative, the claimant shall reimburse the regulatory body or the prior owner for the cost of the testing. While awaiting test results, a claimant:

(a) Shall exercise due care in maintaining and boarding a claimed horse; and

(b) Shall not materially alter a claimed horse.

(9) A postrace urine or blood sample collected from an intact male horse shall be identified to the state veterinarian and the testing laboratory.

(10) Only a licensed veterinarian may possess or administer a Therapeutic AAS.

(11) Qualified ninety (90) day grace period.

(a) The ban on use of AAS set forth in this section shall begin immediately upon the effective date of this administrative regulation. Penalties for a positive finding of AAS from a sample taken during a period of ninety (90) days following the effective date of this administrative regulation shall not be imposed, except as follows:

1. A positive test for AAS from a sample taken during the final thirty (30) days of the ninety (90) day period shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation.

2. A positive finding of AAS in a postrace sample taken during the final thirty (30) days of the ninety (90) day period, accompanied by evidence of administration within the preceding sixty (60) days, shall constitute a violation of this administrative regulation.

(b) During the ninety (90) day period, a positive test for AAS, or a suspected violation of any provision of this section, shall be subject to investigation by the commission.

(c) The trainer and owner shall be notified if there is a positive test for AAS during the last sixty (60) days of the ninety (90) day period.

Section 10. Test Area. (1) A licensed association shall provide and maintain on association grounds a test area.

(2) The test area shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for prerace and postrace testing.

(3) The test area shall be under the supervision and control of the commission veterinarian.

Section 11.[~~10.~~] Sample Collection, Testing and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the commission veterinarian. The commission veterinarian shall take a sample from a horse that finishes first in a race and a horse or horses designated by the judges to determine if there has been a violation of this administrative regulation.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the commission laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the commission laboratory shall be secured as the split sample.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section,

including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer, and

2. Administered only with the permission and in the presence of the commission veterinarian.

(d) A licensed veterinarian may attend to a horse in the test barn, but only with the permission of, and in the presence of, the commission veterinarian.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The judges shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine that a continuance is necessary to effectively resolve the issue.

Section 12.[~~11.~~] Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the samples addressed in Section 10 of this administrative regulation, until the split samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer at a secure location approved and chosen by the commission.

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the time the freezer was closed and verification that the lock was secured prior to and after opening of the freezer. An commission veterinarian or his or her designee shall be present when the freezer is opened.

(e) Evidence of a malfunction of a split sample freezer or of samples that are not in a frozen condition during storage shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the specimen tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding of the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining and shipping the split sample result shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to both the person requesting the testing and the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.

Section 13.[~~12.~~] Split Sample Chain of Custody. (1) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the "Split Sample Chain of Custody Form." The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer by an commission employee after notice to the owner, trainer or their designee, and an commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy for the owner, trainer, or designee, if requested.

Section 14.[~~13.~~] Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15.[~~14.~~] **Trainer Responsibility**. (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat and

sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to a horse that is on association grounds;

(c) The proper identity, custody, care, health, condition and safety of a horse in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse, in his or her care, at a location under the jurisdiction of the commission to the judges and the commission veterinarian and ensuring compliance with Section 22 [~~21~~] of this administrative regulation governing postmortem examinations;

(i) Maintaining a medication record and medication status of a horse in his or her care;

(j) Promptly notifying the judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring proper bandages, equipment, and shoes;

(m) Ensuring the horse's presence in the paddock at least one (1) hour before post time or at a time otherwise prescribed by racing officials before the race in which the horse is entered;

(n) Personally attending in the paddock and supervising the preparation of a horse in his or her care, unless an assistant trainer fulfills such duties or the trainer is excused by the judges; and

(o) Attending the collection of a saliva, urine, blood, or other sample or specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16.[~~15.~~] Licensed Veterinarians. A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the judges. A veterinarian shall report to the judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17.[~~16.~~] Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a KHRA 100-2 form, "Veterinarian Report of Horses Treated to be Submitted Daily", to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent information requested by the commission veterinarian.

(2) The KHRA-2 form shall be signed by the treating veterinarian.

(3) The KHRA-2 form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The KHRA-2 form shall be confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of the KHRA-2 form by the veterinarian or his or her designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 1:095.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by commission personnel.

Section 18.[~~17.~~] Veterinarian's List. (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list if, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian or a licensed veterinarian approved by the commission.

(4) A horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or nonbetting), qualifying race, time trial, or official workout for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365 day period - thirty (30) days;

(c) Third incident within a 365 day period - 180 days;

(d) Fourth incident within a 365 day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse shall be removed from the bleeder list only upon the direction of the commission veterinarian, who shall certify in writing to the judges the recommendation for removal.

(8) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19.[~~18.~~] Distribution of Purses, Barn Searches and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the commission laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance or metabolic derivative in the saliva, urine, blood, body fluids or other sample or specimen taken from a horse.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the laboratory issues a positive finding, the Executive Director of the commission or the judges shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the judges shall

order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20.[~~19.~~] Other Prohibited Practices. In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited:

(1) The possession or use of a drug, medication, or substance by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission;

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the driver;

(2) Without the prior permission of the commission or its designee, the possession or use of a drug, medication or substance that has never been approved by the U. S. Food and Drug Administration (FDA) for use in humans or animals at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Research Drug Council;

(3) The possession or use of the following blood doping agents at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoetin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue;

(4) The practice, administration or application of a treatment, procedure or therapy which may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a driver;

(5) The use of extracorporeal shock wave therapy or radial pulse wave therapy unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission shall administer the treatment;

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the prescribed form within twenty-four (24) hours of treatment. The form to be used is the "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy;"

(6) The administration of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse within twenty-four (24) hours of a race in which the horse is entered;

(7) Without the prior permission of the commission veterinarian or his or her designee, based on standard veterinary practice for recognized conditions, the use of a nasogastric tube which is longer than six (6) inches for the administration of any substance within twenty-four (24) hours prior to the time of a race in which the horse is entered;

(8) A serum total carbon dioxide (TCO2) level that exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered; except, no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 20 of this administrative regulation;

(9) Possession or use of a blood gas machine by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission; and

(10) Possession or use of a shock wave therapy machine or radial pulse wave therapy machine by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21.[~~20.~~] TCO2 Testing and Procedures. (1)(a) The presiding judge may order the prerace or postrace collection of blood samples from, and prerace or post race testing of, a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as directed by the presiding judge, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Prerace and postrace testing shall be done at a reasonable time, place, and manner as directed by the presiding judge.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the Executive Director of the commission shall be informed of the positive finding.

(d) If the sample is taken prior to the race and the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the judges shall scratch the horse from the race.

(e) Split Sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of the samples by the commission veterinarian; however, the collection and testing of a split sample for TCO2 testing shall be done at a reasonable time, place and manner directed by the commission veterinarian.

(f)The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO2 is determined to exceed 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, and the licensed owner or trainer of the horse certifies in writing to the judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the judges but not for more than 120 hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be re-tested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by an commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, water, and, subject to the specific approval of the commission veterinarian, the horse's usual feed ration and supplements. In addition, subject to approval of the commission veterinarian, the horse shall be administered furosemide by the commission veterinarian in the same manner and at the same dosage as was provided to horses eligible for furosemide on the day which the horse in quarantine raced.

(f) If the commission veterinarian is satisfied that the horse's level of TCO2, as registered in the original test, is physiologically normal for that horse, the judges shall permit the horse to race. In this case, the judges may require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO2 level is physiologically normal.

Section 22.[~~21.~~] Postmortem Examination. (1) The commission veterinarian may require a postmortem examination by a qualified designee of the commission of a horse that dies or is destroyed at a location under the jurisdiction of the commission.

(2) The commission or its designee shall coordinate with the

trainer or owner to determine and address any insurance requirements.

(3) The commission veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The commission veterinarian may submit saliva, blood, urine, and other samples and specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The commission shall bear the cost of a necropsy that is required by the commission.

(4) The presence of a prohibited drug, medication, substance or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse that died during a pari-mutuel race shall constitute a violation of this administrative regulation.

Section 23.[~~22.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule", 09/08[~~(11/05)~~];

(b) "Declaration to remove a horse from the Administration of Furosemide KHRA 100-1", 8/06;

(c) "Veterinary Report Of Horses Treated To be Submitted Daily, KHRA 100-2", 8/06;

(d) "Split Sample Chain of Custody Form, KHRA 100-3", 8/06;

(e) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy, KHRA 100-4", 8/06;

(f) "Certificate of Termination of Lasix, KHRA 100-5", 8/06; and

(g) "Therapeutic AAS Administration Form", 09/08.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the KHRA Web site at www.khra.ky.gov.

ROBERT BECK, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the use of medications in horses on race days at pari-mutuel thoroughbred horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all horses engaged in pari-mutuel horse racing in the Commonwealth of Kentucky, as regulated by the Kentucky Horse Racing Commission pursuant to KRS Chapter 230, compete on a level playing field, and that no horse enjoys an unfair advantage due to the use of performance-enhancing drugs or other prohibited medications.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.240(2) states in part as follows: "The authority shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." This regulation furthers the statutory goal above by setting forth the rules and prohibitions relating to the use of race day medications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative will clarify exactly which race day medications can be taken and in what amounts. It also establishes the procedures to be used for taking blood and urine samples from race horses, and the procedures to be used in testing the samples for prohibited drugs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation? The amendment to this administrative regulation creates an extensive new section banning the use of anabolic steroids, and setting forth the terms of a grace period during which penalties for the detection of anabolic steroids will be abated or mitigated somewhat.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ban the use of anabolic steroids, in order to ensure that horses racing in the Commonwealth of Kentucky compete on an equal basis with one another, without the use of anabolic steroids.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adding anabolic steroids to the prohibitions against improper drug use set forth 811 KAR 1:090. KRS 230.240(2) specifically grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the use of drugs in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by adding a more detailed provision concerning steroids to the comprehensive provisions regulating drug use already contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission currently licenses as standardbred racing participants 854 owners, 63 trainers, and 14 veterinarians. These are the individuals most affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Owners, trainers, and veterinarians will be required to comply with the ban on the use of anabolic steroids in horse racing.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No cost.

(b) On a continuing basis. No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Horse Racing Commission already has funding to administer this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by the amendment to this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment; the ban on steroids applies to all participants in racing on an even basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, as the agency promulgating this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.240(2), which grants the commission the authority to promulgate regulations concerning the use of medications in race horses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may require an additional detention barn worker to collect blood and urine samples in some situations.

(a) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Exact amount undetermined.

(d) How much will it cost to administer this program for subsequent years? Exact amount undetermined.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
811 KAR 1:095E

KRS 230.215(2) states in part as follows: "It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the Commission forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. This emergency regulation is necessary to immediately ban the use of anabolic steroids in horses that race at licensed pari-mutuel horse race meetings in Kentucky. The use of anabolic steroids undermines the principle of fair competition between equine athletes, and creates the suspicion that the outcome of races is determined by the unfair advantage gained through the use of anabolic steroids, rather than by the natural racing ability of the competing horses. Reduced public confidence in horse racing threatens to weaken one of Kentucky's most valuable and venerable industries, and jeopardizes the economic well-being of the thousands of Kentuckians who depend upon the industry for their livelihood. An ordinary administrative regulation is not sufficient to ban the use of anabolic steroids. Several leading horse racing organizations, including the Racing Medication and Testing Consortium, the Jockey Club Thoroughbred Safety Committee, the Breeder's Cup and the Graded Stakes Committee of the Thoroughbred Owners and Breeder's Association, have issued a public call for a ban to be imposed on the use of anabolic steroids by December 31, 2008. The Graded Stakes Committee has also stated that races in states which fail to adopt an effective ban before the later of January 1, 2009, or the date of a state or racetrack's first graded race in 2009, will lose their graded status. Similarly, the Breeder's Cup has announced that it will not fund Stakes purses or award Breeder's Cup Challenge events to racetracks in states that fail to adopt a ban on anabolic steroids either by state regulation or racetrack house rule. Kentucky should therefore endeavor to impose a ban by the end of 2008. Kentucky's ban on the use of anabolic steroids, however, includes an initial ninety (90) day grace period intended to exempt from penalty those trainers and owners who comply in good faith with the regulation when it goes into effect. The grace period should be concluded by the end of December 2008. An ordinary administrative regulation could not go into effect, and the grace period could not be completed, by the end of December. An emergency regulation is required to meet this timetable. The ban should include standardbred racing as well. It is important that Kentucky's rules regarding medications remain uniform, and the Red Mile and the Kentucky Harness Horsemen's Association have called for a ban on the use of anabolic steroids in standardbred racing. This emergency regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the emergency regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT D. VANCE, Secretary
ROBERT M. BECK, JR., Chairman

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Enforcement
(Emergency Amendment)

811 KAR 1:095E. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260(1), (3), 230.265(2), 230.290(2), 230.300, 230.320(1)

STATUTORY COMMISSION: KRS 230.215(2), 230.240(2), 230.260(3)

EFFECTIVE: September 5, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the Commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the disciplinary powers and duties of the judges and the Commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that such other person or entity would care for or train a horse, or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the Schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the Schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the Schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the Schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked pursuant to this administrative regulation pertaining to:

(a) A violation involving a Class A drug;

(b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;

(c) A third or subsequent violation of 811 KAR 1:090 for an excessive TCO2 level; or

(d) A third or subsequent violation of 811 KAR 1:090 involving shock wave or blood gas machines.

(8) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule.

(9) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines for Standardbreds.

Section 2. General Provisions. (1) An alleged violation of 811 KAR 1:090 shall be adjudicated in accordance with this administrative regulation, and with 811 KAR 1:100, 811 KAR 1:105, and KRS

Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a prerace or postrace sample that is not classified in the Schedule, the Commission may establish a classification after consultation with either or both of the Racing Commissioners International and the Racing and Medication Consortium.

(3) The judges and the Commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the Withdrawal Guidelines shall be considered by the judges and the Commission as a mitigating factor to be used in determining violations and penalties.

(4) Pursuant to KRS 230.320, the Commission shall have the Commission to suspend or revoke the Commission-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked or a horse that has been suspended shall be denied access to locations under the jurisdiction of the Commission during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in calendar days.

(7) A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the Commission. If an appeal is pending, that fact shall be so noted.

(8) To protect the racing public and ensure the integrity of racing in the Commonwealth, a trainer whose penalty for a prior Class A violation or for a prior Class B third offense violation under this administrative regulation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association and the cost shall be borne by the trainer.

(9) A veterinarian who has engaged in prohibited practices in violation of 811 KAR 1:090, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing board of veterinary medicine by the judges.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(11) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the judges or the Commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing such overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the judges or the Commission.

(12) Any person who has been fined under this administrative regulation shall be suspended until fine has been paid in full.

(13) Payment of a fine directly or indirectly by a person other than the person upon whom it is imposed shall be prohibited and shall not serve to abate or satisfy any penalty imposed.

(14) Written or printed notice of the assessment of a penalty shall be made to the person penalized, notice shall be posted immediately at the office of the association, and notice shall be forwarded immediately to the office of the Commission, the United States Trotting Association, and the Association of Racing Commissioners International by the presiding judge or clerk of the course.

(15) If the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in such a race.

(16) A horse shall not have the right to compete while owned or controlled wholly or in part by a person whose license has been suspended or revoked. An entry made by or for a licensee whose license has been suspended or revoked or for a horse which has been suspended shall be held liable for the entrance fee without the right to compete unless the penalty is removed.

(17) An association shall not willfully allow a person whose license has been suspended or revoked to drive in a race, or a suspended or disqualified horse to start in a race or a performance against time.

(18) An association shall not willfully allow the use of its track or grounds by a licensee whose license has been suspended or revoked, or a horse that has been suspended.

(19) If a person is excluded from a pari-mutuel association by the association, the Commission shall be notified.

(20) A person subject to current suspension, revocation, or expulsion shall not act as an officer of an association. An association shall not, after receiving notice of the penalty, employ or retain in its employ an expelled, suspended, disqualified or excluded person at or on the track during the progress of a race meeting.

(21) A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) During a race meet at another operating track in this state where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(22) A penalty imposed by the United States Trotting Association or the racing commissions of other states shall be recognized and enforced by the Commission unless application is made for a hearing before the Commission, during which the applicant must show cause as to why the penalty should not be enforced against him in this state.

Section 3. Prior Offenses. (1) A prior offense occurring in Kentucky shall be considered, in accordance with the requirements of this section, by the judges and by the Commission in assessing penalties. A prior offense occurring in another racing jurisdiction shall be considered by the judges and the Commission in assessing penalties. The judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

(2) A prior offense occurring before the effective date of this administrative regulation shall not be considered.

(3) A prior offense involving a Class C drug or Class D drug may be considered as a prior offense if the act that constituted the offense was committed after the effective date of this administrative regulation and within one (1) year of the offense for which the person stands charged.

(4) A prior offense involving a Class A or B drug may be considered as a prior offense if the act that constituted the offense was committed after the effective date of this administrative regulation.

(5) A prior offense shall not be considered for purposes of enhancing a penalty if the drug, medication or substance that was the subject of the prior offense was of a lower class, pursuant to the Schedule, than the drug, medication or substance that is the subject of the offense for which the person stands charged.

Section 4. Penalties for Violations Not Related To Drugs or Medications. (1) A violation classified as a Category 1 violation shall be punishable by a suspension or revocation of licensing privileges from zero to thirty (30) days, in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine not to exceed $5,000.

(2) A violation classified as a Category 2 violation shall be punishable by a suspension or revocation of licensing privileges from thirty (30) to sixty (60) days in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission

may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine not to exceed $10,000.

(3) A violation classified as a Category 3 violation shall be punishable by a suspension or revocation of licensing privileges from sixty (60) days to permanent suspension or revocation in proportion to the seriousness of the violation. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter in an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine up to $50,000 commensurate with the seriousness of the violation.

(4) A violation of 811 KAR Chapter 1 not otherwise specifically addressed shall be a Category 1 violation and shall be subject to the penalties set forth in subsection (1) of this section.

Section 5. Penalties for Violations Relating to Class A, B, C or D Drugs. (1) Class A drug. A licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, in violation of 811 KAR 1:090, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to three (3) years, in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(2) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $5,000 to $10,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) to five (5) years in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $10,000 to $20,000.

(c) For a third offense:

1. A suspension or revocation of licensing privileges for not less than five (5) years in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. A revocation of licensing privileges may be permanent. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $20,000 to $50,000

(d) Suspension of the owner's horse. A horse administered a Class A drug, in violation of 811 KAR 1:090, shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense - a suspension from zero to sixty (60) days;

2. For a second offense - a suspension from sixty (60) - 180 days;

3. For a third offense - a suspension from 180 - 240 days.

(2) Class B drug. A licensee who administers, or is a party to or is responsible for administering a Class B drug to a horse in violation of 811 KAR 1:090, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to sixty (60) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $500 to $1,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from one (1) month to six (6) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked..

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $2,500.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from two (2) months to one (1) year in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $2,500 to $5,000.

(d) Suspension of the owner's horse. A horse administered a Class B drug, in violation of 811 KAR 1:090, shall be subject to a suspension from racing in Kentucky, as follows:

1. For a first offense - no suspension;

2. For a second offense - a suspension from zero - 60 days;

3. For a third offense - a suspension from sixty (60) - 180 days.

(3) Class C drug. A licensee who administers, or is a party to or is responsible for administering a Class C drug to a horse, in violation of 811 KAR 1:090, or is responsible for administering an overage of phenylbutazone or flunixin, in violation of 811 KAR 1:090, Section 8, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to ten (10) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $250 to $500.

(b) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) to thirty (30) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $500 to $1,000.

(c) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $2,500.

(4) Class D Drug.

(a) The penalty for a violation involving a Class D drug shall be a written warning to the trainer and owner.

(b) Multiple violations involving a Class D drug may result in a suspension of licensing privileges from zero to five (5) days in proportion to the seriousness of the violation and the facts of the case.

(c) The licensee whose licensing privileges may be suspended and the Commission may enter into an agreement to mitigate the suspension by agreeing to payment of a fine of not more than $250.

Section 6. TCO2 penalties. A person who violates or causes the violation of 811 KAR 1:090, Section 19(6), (7), or (8) shall be

subject to the following penalties:

(1) For a first offense involving a positive pre-race test result, the licensee shall be issued a warning.

(2) For a first offense involving a positive post-race test result:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $1,500.

(3) For a second offense involving a prerace or postrace test result:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,500 to $3,000.

(4) For a third offense involving a prerace or postrace test result:

(a) A suspension or revocation of licensing privileges from six (6) months to (1) year in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $3,000 to $5,000.

(5) Subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to forfeiture of purse money won.

(6) Suspension of the owner's horse. A horse that registers a TCO2 level in violation of 811 KAR 1:090 shall be subject to suspension from racing in the Commonwealth of Kentucky as follows:

(a) For a first offense - no suspension;

(b) For a second offense - a suspension from fifteen (15) to sixty (60) days;

(c) For a third offense - a suspension from sixty (60) days to 180 days;

(d) For a fourth offense - a suspension from eight (8) months to one (1) year.

(7) In any instance of a positive prerace TCO2 test result, the horse shall be scratched.

Section 7. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes a violation of 811 KAR 1:090, Section 19(5)(b), (9), or (10) regarding a shock wave machine or blood gas machine shall be subject to the following penalties:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from one (1) to three (3) months in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $5,000.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from ninety (90) to 180 days in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $5,000 to $10,000.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from 180 days to one (1) year in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $10,000 to $20,000.

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation or satisfaction of an inactive person. This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the Commission;

(b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the Commission.

(4) A person who is responsible for the care, training or veterinarian services provided to a horse formerly under the care, training or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training and racing of the horse from a separate and independent checking account. Copies of the invoices for such expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 811 KAR 1:090, Section 6, regarding furosemide and adjunct bleeder medication use on raceday shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 811 KAR 1:090, Section 8(1), for exceeding the concentration levels allowed for phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(3) A person who violates 811 KAR 1:090, Section 8(10), for administering a non-steroidal anti-inflammatory drug other than phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(4) A person who is responsible for more than one oral or

intravenous administration of a Nonsteroidal Anti-Inflammatory Drug (NSAID) within twenty-four (24) hours of post time, in violation of 811 KAR 1:090, Section 8(1), shall be treated the same as a person who has committed a Class B drug violation.

(5) A person who violates 811 KAR 1:090, Section 19(2), shall be treated the same as a person who has committed a Class A drug violation.

(6) A person who violates 811 KAR 1:090, Section 19(3)(a), shall be treated the same as a person who has committed a Class A drug violation.

(7) A person who violates Section 2(15) of this administrative regulation shall be subject to a suspension or revocation of licensing privileges for up to one (1) year in proportion to the seriousness of the violation and the facts of the case and shall forfeit purse money won while in violation of Section 2(15). The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to $5,000.

(8) An association in violation of Section 2(16), (17), or (19) of this administrative regulation shall, together with its officers, be subject to a suspension or revocation of licensing privileges for up to thirty (30) days in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to $5,000.

Section 10. Disciplinary Measures by Judges. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the judges may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case; or

(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or from a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the judges may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed $5,000 in proportion to the seriousness of the violation and the facts of the case.

Section 11. Disciplinary Measures by the Commission. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the Commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or a licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation; or

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the Commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be excluded or ejected from association grounds or a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to $50,000.

(3) Upon appeal of a matter determined by the judges the Commission may or hearing de novo of a matter determined by the judges, reverse or revise the judges' ruling in whole or in part; except as to findings of fact by the judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the judges for a foul in a race.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule", (9/08)[~~(11/05)~~]; and

(b) "The Kentucky Horse Racing Commission Withdrawal Guidelines for Standardbreds", (09/08)[~~(4/07)~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site, www.khra.ky.gov.

ROBERT BECK, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859)246-2039

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth penalties for the prohibited use of medications in horses on race days at pari-mutuel horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all horses engaged in pari-mutuel horse racing in the Commonwealth of Kentucky, as regulated by the Kentucky Horse Racing Commission pursuant to KRS Chapter 230, compete on a level playing field, and that no horse enjoys an unfair advantage due to the use of performance-enhancing drugs or other prohibited medications.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.240(2) states in part as follows: "The Commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." This regulation furthers the statutory goal above by setting forth the rules and prohibitions relating to the use of race day medications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulations provides the penalty structure for the prohibited use of race day medications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation? The amendment makes amends the "Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule" place anabolic steroids in the "B" penalty range, rather than the "C" range as previously classified. The amendment alters the "Kentucky Horse Racing Commission Withdrawal Guidelines" to increase the withdrawal period for anabolic steroids from 72 hours to 60 days.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more effectively ban the use of anabolic steroids in racing, by increasing the penalty range and the withdrawal period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adjusting the penalty range and withdrawal times for the use of anabolic steroids in horse racing. KRS 230.240(2) specifically grants the Kentucky Horse Racing Commission the Commis-

sion to promulgate regulations governing the use of drugs in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by prescribing appropriate penalty ranges and withdrawal guidelines concerning the use of anabolic steroids.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission currently licenses The Kentucky Horse Racing Commission currently licenses as standardbred racing participants 854 owners, 63 trainers, and 14 veterinarians. These are the individuals who will be primarily affected by the regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Owners, trainers, and veterinarians will be required to comply with the ban on the use of anabolic steroids in horse racing.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No cost.

(b) On a continuing basis. No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Horse Racing Commission already has sufficient funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by the amendment to this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment; the ban on steroids applies to all participants in racing on an even basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, as the agency promulgating this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.240(2), which grants the Commission the Commission to promulgate regulations concerning the use of medications in race horses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may require an additional detention barn worker to collect blood and urine samples in some situations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Exact amount undetermined.

(d) How much will it cost to administer this program for subsequent years? Exact amount undetermined.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, September 9, 2008)

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. A teacher education institution shall be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels.

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of instructional leadership - school principal.
(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of instructional leadership - school principal.

Section 2. Conditions and Prerequisites. (1) The provisional and professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.
(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.
(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:
(a) A master's degree;
(b) Three (3) years of documented teaching experience in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160;
(c) A written statement documenting the candidate's skills and understanding in the following areas:
1. Ability to improve student achievement;
2. Leadership; and
3. Advanced knowledge of curriculum, instruction, and assessment; and
(d) An agreement from a school district pledging support that includes opportunities for the candidate to participate in a high quality practicum experience. The agreement shall include:
1. A description of how the district will provide opportunities for the candidate:
a. To observe school and district leadership; and
b. To participate in school and district leadership activities;
2. Confirmation that the candidate shall be permitted to utilize aggregated school and district information and data; and
3. The signature of the district superintendent or the district superintendent's designee.[~~Qualification for a Kentucky classroom teaching certificate;~~
~~(b) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other test authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with the Interstate Agreement on Qualification of Educational Personnel; and~~
~~(c) Successful completion of the Kentucky Teacher Internship Program, as provided in 16 KAR 7:010, or two (2) years of successful teaching experience outside the state of Kentucky.~~]

Section 3. Kentucky Administrator Standards for Preparation and Certification. [~~(1)~~] The approved program of preparation for the provisional certificate for instructional leadership - school principal shall:
(1) Prepare a candidate for the position of school principal as specified in the standards included in:
(a) The "Educational Leadership Policy Standards: ISLLC 2008"; and
(b) The "Technology Standards for School Administrators"; and
(2) Document candidate performance using "Dispositions, Dimensions, and Functions for School Leaders".
[~~(a) Include a master's degree in education; and~~
~~(b) Be designed to:~~
~~1. Address recommendations of relevant professional organizations including:~~
~~a. The National Policy Board for Educational Administration;~~
~~b. The University Council for Educational Administration;~~
~~c. The National Council of Professors of Educational Administration;~~
~~d. The National Association of Secondary School Principals;~~
~~e. The Collaborative for Technology Standards for School Administrators; and~~
~~f. The American Association of School Administrators; and~~
~~2. Prepare a candidate for the position of School Principal as specified in the standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" and "Technology Standards for School Administrators".~~
~~(2) The Interstate School Leaders Licensure Consortium Standards for School Leaders are as follows:~~
~~(a) School leader standard 1. A school administrator is an instructional leader who promotes the success of all students by facilitating the development, articulation implementation, and stewardship of a vision of learning that is shared and supported by the school community;~~
~~(b) School leader standard 2. A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth;~~
~~(c) School leader standard 3. A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;~~
~~(d) School leader standard 4. A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;~~
~~(e) School leader standard 5. A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner; and~~
~~(f) School leader standard 6. A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.~~
~~(3) The Technology Standards for School Administrators are as follows:~~
~~(a) Technology standard 1. Leadership and vision. Educational leaders inspire a shared vision for comprehensive integration of technology and foster an environment and culture conducive to the realization of that vision.~~

~~(b) Technology standard 2. Learning and teaching. Educational leaders ensure that curricular design, instructional strategies, and learning environments integrate appropriate technologies to maximize learning and teaching.~~

~~(c) Technology standard 3. Productivity and professional practice. Educational leaders apply technology to enhance their professional practice and to increase their own productivity and that of others.~~

~~(d) Technology standard 4. Support, management, and operations. Educational leaders ensure the integration of technology to support productive systems for learning and administration.~~

~~(e) Technology standard 5. Assessment and evaluation. Educational leaders use technology to plan and implement comprehensive systems of effective assessment and evaluation.~~

~~(f) Technology standard 6. Social, legal, and ethical issues. Educational leaders understand the social, legal, and ethical issues related to technology and model responsible decision-making related to these issues.~~]

Section 4. Principal Preparation Programs. (1) All principal preparation programs approved or accredited by the Education Professional Standards Board prior to May 31, 2009 shall no longer be approved or accredited as of December 31, 2011.

(a) A principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 shall cease admitting new candidates after December 31, 2011.

(b) Candidates admitted to a principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 shall complete the program by January 31, 2014.

(c) An institution of higher learning with a principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2009.

(d) An institution's redesigned principal preparation program may become operational beginning January 1, 2010, if the institution:

1. Submits a redesigned principal preparation program for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the Education Professional Standards Board pursuant to 16 KAR 5:010, Section 22.

(e) Institutions submitting a redesigned principal preparation program shall not be subject to any submission dates for program approval for principal preparation programs from May 31, 2009 until December 31, 2012.

(f)1. The Education Professional Standards Board shall appoint a Principal Preparation Program Redesign Review Committee to conduct reviews of redesigned principal preparation programs submitted for approval between May 31, 2009 and December 31, 2012.

2. Principal preparation programs submitted for approval between May 31, 2009 and December 31, 2012 shall:

a. Be reviewed by the Principal Preparation Program Redesign Review Committee; and

b. Not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the Education Professional Standards Board pursuant to 16 KAR 5:010, Section 22(2).

3.a. After review of a principal preparation program, the Principal Preparation Program Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

i. Approval;

ii. Approval with conditions; or

iii. Denial of approval.

b. The Education Professional Standards Board shall consider recommendations from staff and the Principal Preparation Program Redesign Review Committee and shall issue a decision pursuant to 16 KAR 5:010, Section 22(4).

(2) Beginning May 31, 2009, in addition to the requirements established in 16 KAR 5:010, Section 22, the educator preparation unit shall prepare and submit to the Education Professional Standards Board for each principal preparation program for which the institution is seeking approval a concise description of the preparation program which shall provide the following documented information:

(a) Signed collaborative agreements with school districts that include the following:

1. Joint screening of principal candidates by both district and university;

2. Joint identification of potential program leaders and mentors;

3. District and university codesign and codelivery of courses; and

4. The manner in which the principal preparation program is based on the identified leadership needs of each district;

(b) The protocol for screening applicants that ensures the identification and admission of high quality candidates into the program;

(c) A matrix that illustrates the alignment between the standards and performance indicators identified in Section 3 of this administrative regulation and the program's curriculum and field experiences;

(d) A syllabus for each of the program's required courses identified in the documentation **required by paragraph (c) of this subsection**[~~in subsection (c) of this section~~];

(e) The program's plan to collaborate with academic disciplines and programs outside of the field of education in order to supplement the candidate's knowledge and skills set;

(f) The program's plan to collaborate with each district in providing high quality field experiences that:

1. Enhance courses throughout the entire program;

2. Ensure that the candidate has a continuum of school-based experiences that range from observing, to participating, to leading; and

3. Expose the candidate to diverse student populations and school environments;

(g) The program's plan to use rigorous formative and summative evaluations of each candidate's:

1. Knowledge and skills to advocate, nurture, and sustain a school culture that promotes and supports high levels of learning for all students; and

2. Knowledge and skills to manage a school for efficiency, accountability, and safety; and

(h) The program's plan to require all candidates to conduct a capstone project and defend it to a panel of program faculty and practicing school administrators at the end of Level I preparation.

Section 5. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. An applicant for certification as a school principal, including vocational principal, shall attain the specified minimum score on the assessments required by 16 KAR 6:030.

Section 6.[~~5.~~] Statement of Eligibility for Internship. (1) A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(a) Has successfully completed an approved program of preparation;

(b) Has three (3) years of full-time teaching experience; and

(c) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period for[~~of~~] completion of assessments under KRS 161.027(6).

(2) Application shall be made on "Application for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in 16 KAR 2:010.

(3) A request for renewal of the Statement of Eligibility pursuant to KRS 161.027(7) shall be made on Form TC-2, incorporated by reference in 16 KAR 4:060.[~~Form TC-1.~~]

Section 7.[~~6.~~] (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 16 KAR 7:020.

(2) The renewal of the professional certificate for instructional

leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) [~~In addition to the requirements of KRS 161.027(9),~~] Each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require[~~:~~

~~(a)~~] successful completion of two (2) years of experience as a school principal within the preceding five (5) years.[~~; or~~]

(4)[~~(b)~~] If the applicant has not successfully completed the two (2) years of experience as required by subsection (3) of this section, pursuant to KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership-school principal, level II, shall require:

(a)[~~1.~~] Completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed; or

(b)[~~2.~~] Successful completion of forty-two (42) hours of approved training selected from programs approved by the Kentucky Effective Instructional Leadership Training Program provided in KRS 156.101.

Section 8.[~~7.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Dispositions, Dimensions, and Functions for School Leaders" adapted from the "Kentucky Cohesive Leadership System Continuum for Principal Preparation and Development" by the Education Professional Standards Board, May 2008;

(b) "Educational Leadership Policy Standards: ISLLC 2008" as adopted by the National Policy Board for Educational Administration, December 12, 2007; and[~~"Interstate School Leaders Licensure Consortium Standards for School Leaders, 1996, the Council of Chief State School Officers";~~

~~(b) "Form TC-1, rev. 10/02 "; and~~]

(c) "Technology Standards for School Administrators", 2001, Collaborative for Technology Standards for School Administrators.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Drive, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

[~~(3) This material may also be obtained from the Council of Chief State School Officers, Attn: Publications, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431.~~]

DR. JAMES G. CIBULKA, Chairperson

APPROVED BY AGENCY: June 3, 2008

FILED WITH LRC: June 6, 2008 at 10 a.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

FINANCE AND ADMINISTRATIVE CABINET
Department of Revenue
(As Amended at ARRS, September 9, 2008)

103 KAR 3:020. Sales and Telecommunications Forms manual.

RELATES TO: KRS 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081, 131.110, 131.130, 131.130, 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 134.580, 136.600-136.660, 139.070, 139.095, 139.170, 139.185, 139.210, 139.230, 139.240, 139.250, 139.260, 139.270, 139.470, 139.480, 139.483, 139.495, 139.497, 139.515, 139.517, 139.5382, 139.550, 139.570, 139.590, 139.620(1), 139.770(2), 139.778, 144.132, 154.20-206, 154.45-090, 154.45-110, 160.613-160.617, 224.01-310, 247.920

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of Sales and Use Taxes and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

Section 1. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101(a), "Sales and Use Tax Permit", shall be conspicuously displayed by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A101(b), "Sales and Use Tax Permit Update", shall be issued by the Department of Revenue to update the Sales and Use Tax Permit with business name and address change information.

(3) Revenue Form 51A101(c), "Kentucky Streamlined Sales and Use Tax (SST) Filing[~~Information~~] Permit", shall be issued to Model 4 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the **SST**[~~(SST)~~] permit holder at the location for which the permit was issued.

(4) Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)",shall be issued by the Department of Revenue to update the Kentucky Streamlined Sales and Use Tax (SST) Filing[~~Information~~] Permit with business name and address change information.

(5)[~~(2)~~] Revenue Form 51A102, "Kentucky Sales and Use Tax Worksheet", shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(6)[~~(3)~~] Revenue Form 51A102E, "Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer", shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for **a** particular reporting period.

(7)[~~(4)~~] Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Worksheet", shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due.

(8)[~~(5)~~] Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer", shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due on an accelerated basis and remitted via electronic funds transfer.

(9)[~~(6)~~] Revenue Form 51A105, "Resale Certificate", shall be presented to a seller by a Kentucky sales and use tax permit holder to claim that the tangible personal property purchased from the seller will be:

(a) Resold in the regular course of business;

(b) Leased or rented; or

(c) Used as raw material, industrial supply or industrial tool.

(10)[~~(7)~~] Revenue Form 51A109, "Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax)", shall be filed with the Department of Revenue by a manufacturer, processor, miner or refiner to apply for an energy direct pay authorization.

(11)[~~(8)~~] Revenue Form 51A110, "Direct Pay Authorization", shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Department of Revenue the sales or use tax on all purchases of tangible personal property, excluding energy and energy-producing fuels.

(12)[~~(9)~~] Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or production processor to claim exemption from sales and use tax.

(13)[~~(10)~~] Revenue Form 51A112, "Application for Direct Pay Authorization", shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(14)[~~(11)~~] Revenue Form 51A113, "Kentucky Consumer's Use Tax Worksheet", shall be completed by a registered consumer's

use tax permit holder and submitted to the Department of Revenue on a regular basis to report the amount of purchases subject to Kentucky use tax.

(15)[~~(12)~~] Revenue Form 51A113 **51A113(O)**[~~(O)~~][~~0~~]Consumer's Use Tax Return", shall be completed by a person storing, using, or otherwise consuming tangible personal property in Kentucky who is not registered for a consumer's use tax permit number.

(16)[~~(13)~~] Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", shall be presented to the Department of Revenue by anyone who wishes to order selected sales and use tax forms and regulations.

(17) Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", shall be completed by a purchaser of Watercraft, Aircraft, or other tangible property to document if the purchase of the property is subject to the Kentucky Use Tax.

(18)[~~(14)~~] Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", shall be presented to the Department of Revenue by a resident 501C(3) charitable, educational, or religious institution; historical sites; and units of federal, state or local governments to apply for a sales and use tax exemption on purchases of tangible personal property and certain services to be utilized in the exempt entity's function.

(19)[~~(15)~~] Revenue Form 51A126, "Purchase Exemption Certificate", shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property or services.

(20)[~~(16)~~] Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", shall be presented to a retailer by an out-of-state agency or institution that is qualified for exemption in their state of residence.

(21)[~~(17)~~] Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to collect, source separate, compress, bale, shred or otherwise handle waste material.

(22)[~~(18)~~] Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", shall be submitted to the Department of Revenue by an energy direct pay holder to reconcile the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount of sales and use tax paid based upon previous estimates of tax due.

(23)[~~(19)~~] Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers", shall be completed by a qualified certificated air carrier on a monthly basis to claim an aviation fuel tax credit against the company's sales and use tax liability for the month.

(24)[~~(20)~~] Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", shall be completed by aviation fuel dealers selling aviation fuel in order to determine the sales and use tax collected and remitted on the sale of aviation fuel, including jet fuel.

(25) [~~(21)~~] Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", shall be completed by an equine breeder to report taxable receipts from equine breeding fees.

(26)[~~(22)~~] Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", shall be completed by motor vehicle dealers who collect Kentucky sales tax on the sale of motor vehicles to residents of states who subject Kentucky residents to sales upon the purchase of motor vehicles in their states.

(27)[~~(23)~~] Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used for the direct operation of watercraft in the activity of transporting property or in conveying persons for hire.

(28)[~~(24)~~] Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

(29)[~~(25)~~] Revenue Form 51A150, "Aircraft Exemption Certificate", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. [~~(26) Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", shall be presented in duplicate to a retailer by an enterprise zone qualified business to claim exemption from sales and use tax on the purchase of machinery and equipment to be used in a designated enterprise zone.~~

~~(27) Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of building materials to be used in remodeling, rehabilitation, or new construction in an enterprise zone.~~]

(30) [~~(28)~~] Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs and the seller makes delivery of the tangible personal property out of state, and also completes the affidavit portion of the form within two (2) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

(31)[~~(29)~~] Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", shall be presented to a retailer by a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

(32)[~~(30)~~] Revenue Form 51A158, "Farm Exemption Certificate", shall be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding llamas, alpacas, ratites, buffalo, aquatic organisms, or cervids to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(33)[~~(31)~~] Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", shall be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(34)[~~(32)~~] Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", shall be filed with the Department of Revenue by the owner of a motor vehicle, including a towed unit, qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(a) to apply for the truck part direct pay authorization.

(35)[~~(33)~~] Revenue Form 51A161, "Truck Part Direct Pay Authorization", shall be issued by the Department of Revenue to authorize motor carriers to report and pay directly to the department the sales and use tax on all purchases of repair and replacement parts for motor vehicles and to authorize retailers to sell motor vehicle repair and replacement parts directly to the authorized motor carrier without receipt of sales and use tax.

(36)[~~(34)~~] Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", shall be filed annually by motor carriers using the truck part direct pay authorization to report purchases of repair and replacement parts for motor vehicle for the previous calendar year.

(37)[~~(35)~~] Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", shall be filed with the Department of Revenue by the owner of a charter bus qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(b) to apply for a charter bus direct pay authorization.

(38)[~~(36)~~] Revenue Form 51A164, "Charter Bus Direct Pay Authorization", shall be issued by the Department of Revenue to

authorize charter bus carriers to report and pay directly to the Department the sales and use tax on all purchases of repair and replacement parts for charter buses, and to authorize retailers to sell charter bus repair and replacement parts directly to the charter bus carriers without receipt of sales and use tax.

(39)[~~(37)~~] Revenue Form 51A165, "Kentucky Sales and Use Tax Charter Bus Direct Pay Authorization (CB DPA) Purchase Report", shall be filed annually by charter bus carriers using the charter bus direct pay authorization to report purchases of repair and replacement parts for carrier vehicles for the previous calendar year.

(40)[~~(38)~~] Revenue Form 51A200, "Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", shall be used by qualified businesses to apply for a refund of sales and use tax paid on purchases of materials used in an approved project.

(41)[~~(39)~~] Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", shall be used by Kentucky sales and use tax permit holders as a guide in filing their sales and use tax returns and maintaining permit account information.

(42)[~~(40)~~] Revenue Form 51A209, "Sales and Use Tax Refund Application", shall be completed by a Kentucky sales and use tax permit holder and submitted to the Department of Revenue within four (4) years from the date the tax was paid to apply for a refund of sales and use tax previously paid by the permit holder.

(43)[~~(41)~~] Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", shall be completed by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

(44)[~~(42)~~] Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", shall be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(45)[~~(43)~~] Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", shall be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(46)[~~(44)~~] Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

(47)[~~(45)~~] Revenue Form 51A227, "Certificate of Resale (Schools)", shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property that will be resold if the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(48)[~~(46)~~] Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be completed by a business, governmental unit or organization and submitted to the Department of Revenue to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(49)[~~(47)~~] Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be issued by the Department of Revenue to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(50)[~~(48)~~] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", shall be completed by a motion picture production company and submitted to the Department of Revenue to register for a sales and use tax refund.

(51)[~~(49)~~] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", shall be completed by a registered motion picture production company and submitted to the Department of Revenue within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property made in connection with filming and producing motion pictures in Kentucky.

(52)[~~(50)~~] Revenue Form 51A250, "Application for Transient Merchant Permit", shall be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if an urban county government, with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(53)[~~(51)~~] Revenue Form 51A260, "Streamlined Sales **and Use** Tax Agreement–Certificate of Exemption", shall be presented to a seller by a purchaser to claim that tangible personal property purchased from the seller qualifies for exemption.

(54)[~~(52)~~] Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", shall be issued by motor vehicle dealers to a non-resident purchaser of a motor vehicle on which the Kentucky sales tax has been paid.

(55) Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", shall be submitted to **the county clerk by a taxpayer**[~~County Clerks by taxpayers~~] purchasing tangible personal property from out-of-state for title or first-time registration.

(56) Revenue Form 51A290, "Information Sharing and Assignment Agreement for Designated Refund Claims", shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claim under the Kentucky Enterprise Initiative Act, Signature Project, or Alternative Fuel, Gasification or Renewable Energy Facility.

(57) Revenue Form 51A291, "Application for Kentucky Signature Project Sales and Use Tax Refund", shall be completed by an approved company or agency in the construction of an approved Signature Project submitted to the Department of Revenue annually during the (12) years the project grant agreement is in effect.

(58) Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Signature Project.

(59)[~~(53)~~] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax[~~: Notification~~]", shall be issued by the Department of Revenue to a federal government unit which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of tangible personal property to be used in the exempt governmental function.

(60)[~~(54)~~] Revenue Form 51F009, "Purchase Exemption Notification", shall be issued by the Department of Revenue to a resident nonprofit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number additional information concerning the exemption from sales and use tax.

(61) ~~(55)~~] Revenue Form 51F010, "Energy Direct Pay Authorization[~~: Notification~~]", shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the sales and use tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax on that portion of the cost price which is subject to tax pursuant to KRS 139.480(3).

(62) Revenue Form 51F010(a), "Utility Gross Receipts License Tax (UGRLT) Exemption Authorization", shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the utility gross receipts license tax on that portion of the purchase price which is subject to tax. Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for either the sales and use tax or the utility gross receipts license tax and that they are required to report and

pay directly to the Department of Revenue the sales and use tax and the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

Section 2. Telecommunications Provider Tax-Required Forms.(1) Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", shall be used by city and county taxing jurisdictions to certify tax receipts for prior fiscal year if applicable.

(2) Revenue Form 75A002, "Telecommunications Provider Tax Return", shall be used by telecommunications providers to report gross revenues subject to the excise tax and gross revenues tax, and by consumers to report retail purchases of multi-channel video programming services to report the tax due.

(3) Revenue Form 75A002 (I), "Instructions for Telecommunications Provider Tax Return", shall be used by telecommunications providers as a guide in filing their telecommunications provider tax return.

(4) Revenue Form 75A005, "Telecommunications Tax Complaint Form", shall be submitted to the Department of Revenue by local taxing authorities who express disagreement with the distribution of telecommunications tax to their jurisdiction.

(5) Revenue Form 75A900, "Telecommunications Tax Application", shall be used by telecommunications providers to register with the Department of Revenue.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Sales and use tax - referenced material: March 2007:

1. Revenue Form 51A101(a), "Sales and Use Tax Permit", [~~September, 2004~~];

2. Revenue Form 51A101(b), "Sales and Use Tax Permit Update", **August 2008**[~~March 2007~~]

3. Revenue Form 51A101(c), "Kentucky Streamlined Sales and Use Tax (SST) Filing[~~Information~~] Permit", **August 2008**[~~March 2007~~];

4. Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)", **August 2008**[~~March 2007~~];

5.[~~2.~~] Revenue Form 51A102, "Kentucky Sales and Use Tax Worksheet", January[,] 2008 [~~2007~~];

6.[~~3.~~] Revenue Form 51A102E, "Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer", January[,] 2008 [~~2007~~];

7.[~~4.~~] Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Worksheet", January [,] 2008 [~~2007~~];

8.[~~5.~~] Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer", January[,] 2008 [~~2007~~];

9. [~~6.~~] Revenue Form 51A105, "Resale Certificate", January[,] 2005;

10.[~~7.~~] Revenue Form 51A109, "Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax)", September[,] 2006;

11.[~~8.~~] Revenue Form 51A110, "Direct Pay Authorization", August [,] 1997;

12.[~~9.~~] Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", January[,] 2007;

13.[~~10.~~] Revenue Form 51A112, "Application for Direct Pay Authorization", March[,] 2005;

14.[~~11.~~] Revenue Form 51A113, "Kentucky Consumer's Use Tax Worksheet", July[,] 2005;

15.[~~12.~~] Revenue Form **51A113(O)**[~~51A113(O0)~~], "Consumer's Use Tax Return", August[,] 2005;

16.[~~13.~~] Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", April 2008; [~~, February, 2006~~];

17. Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", March 2008;

18.[~~14.~~] Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", January 2008 [~~February, 1993~~];

19.[~~15.~~] Revenue Form 51A126, "Purchase Exemption Certificate", August[,] 2004;

20.[~~16~~] Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", April 2007 [~~December, 2006~~];

21.[~~17.~~] Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", March[,] 2005;

22. [~~18.~~] Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", September[,] 2005;

23. [~~19.~~] Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers ", August[,] 2005;

24. [~~20.~~] Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", August[,] 2005;

25.[~~21.~~] Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", June[,] 2005;

26.[~~22.~~] Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", August[,]2006;

27.[~~23.~~] Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", March[,] 2005;

28.[~~24.~~] Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", January[,] 2007;

29.[~~25.~~] Revenue Form 51A150, "Aircraft Exemption Certificate", January[,] 2005;

[~~26. Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", January, 2007;~~

~~27. Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", January, 2007;~~]

30.[~~28.~~] Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", January[,] 2005;

31.[~~29.~~] Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", July[,] 2005

32.[~~30.~~] Revenue Form 51A158, "Farm Exemption Certificate", July 2008[~~January~~][,][~~2007~~];

33.[~~31.~~] Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", July 2008[~~December~~][~~January,~~][~~2007~~];

34.[~~32.~~] Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", March[,] 2005;

35.[~~33.~~] Revenue Form 51A161, "Truck Part Direct Pay Authorization", December 2006 [~~October 2003~~];

36.[~~34.~~] Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", December, 2006 [~~October 2003~~];

37.[~~35.~~] Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", June[,] 2005;

38.[~~36.~~] Revenue Form 51A164, "Charter Bus Direct Pay Authorization", August[,] 2006.

39.[~~37.~~] Revenue Form 51A165, "Kentucky Sales and Use Tax Charter Bus Direct Pay Authorization (CB DPA) Purchase Report", August[,] 2006.

40.[~~38.~~] Revenue Form 51A200, "Application **for**[~~or~~] Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", March 2008 [~~July, 2005~~];

41.[~~39.~~] Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", July[,] 2005;

42.[~~40.~~] Revenue Form 51A209, "Sales and Use Tax Refund Application", May 2007 [~~March, 2005~~];

43.[~~41.~~] Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", March[,] 2005;

44.[~~42.~~] Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", January[,] 2007;

45.[~~43.~~] Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", July[,] 1980;

46.[~~44.~~] Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", March[,] 2005;

47.[~~45.~~] Revenue Form 51A227, "Certificate of Resale (Schools)", May 2007 [~~August, 1984~~];

48.[~~46.~~] Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", May 2007 [~~January, 1987~~];

49.[~~47.~~] Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", January[,] 2008 [~~1987~~];

50.[~~48.~~] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", May 2007 [~~February, 1987~~];

51.[~~49.~~] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", May 2007

[~~January, 1987~~];

52.[~~50.~~] Revenue Form 51A250, "Application for Transient Merchant Permit", April, 2005;

53.[~~51.~~] Revenue Form 51A260, "Streamlined Sales **and Use** Tax Agreement - Certificate of Exemption", August[,] 2006;

54.[~~52.~~] Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", August[,] 2006;

55. Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", July 2007;

56. Revenue Form 51A290, "Information Sharing and Assignment Agreement for Designated Refund Claims", October 2007;

57. Revenue Form 51A291, "Application for Kentucky Signature Project Sales and Use Tax Refund", October 2007;

58. Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", October 2007;

59. [~~53.~~] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax[~~Notification~~]", January 2008 [~~December, 1998~~];

60. [~~54.~~] Revenue Form 51F009, "Purchase Exemption Notification", January 2008 [~~December, 1998~~];

61.[~~55.~~] Revenue Form 51F010, "Energy Direct Pay Authorization[~~: Notification~~]", January 2008 [~~December, 1998~~]; **and**

62. Revenue Form 51F010(a), "Utility Gross Receipts License Tax (UGRLT) Exemption Authorization", January 2008; **and**

63. Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", January 2008;

(b) Telecommunications provider tax - referenced material:

1. Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", December[,] 2005;

2. Revenue Form 75A002, "Telecommunications Provider Tax Return", December[,] 2005;

3. Revenue Form 75A002(I), "Instructions for Telecommunications Provider Tax Return", July[,] 2006;

4. Revenue Form 75A005, "Telecommunications Tax Complaint Form", October[,] 2006; **and**

5. Revenue Form 75A900, "Telecommunications Tax Application", December[,] 2005.[;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, [~~200 Fair Oaks Lane~~], Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, September 9, 2008)

103 KAR 3:050. Miscellaneous Taxes Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.043, 132.060-132.090, 132.130-132.180, 132.190, 132.200, 132.215, 132.216, 132.220-132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.020, 134.390, 134.420, 134.430, 134.440, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.030, 136.040, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.181-136.187, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 138.165(2), 138.195, 138.210, 138.240, 138.250, 138.260, 138.270, 138.320, 138.341, 138.342, 138.344-138.355, 138.358, 138.450, 138.460, 138.464, 138.4605, 138.470(4), (5), (6), 138.502, 138.530, 138.870, 138.876, 138.880, 138.885, 140.010, 140.060, 140.080(1)(a), 140.100, 140.130, 140.160, 140.165, 140.190, 140.222, 140.300-140.360, 140.350, 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 144.120(4), 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 154.45-090, 154.45-100, 154.45-110(1), 155.170, 160.613-160.617, 209.160, 224.01-310(1), 224.60, 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120,

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of miscellaneous taxes by the Department of Revenue other than Income Taxes, Sales and Use Taxes, Telecommunications Excise and Gross Revenues Tax, Severance Taxes, and Property Taxes.

Section 1. Alcoholic Beverage Tax. (1) Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", shall be used by persons importing distilled spirits, wine and malt beverages into Kentucky through the United States Bureau of Customs for personal consumption in this state to acknowledge liability for the alcoholic beverage excise tax.

(2) Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", shall be used by distillers, rectifiers, or bottlers of distilled spirits to report liability for distilled spirits excise tax and wholesale sales tax.

(3) Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", shall be used by wholesalers of distilled spirits to report liability for distilled spirits excise tax, wholesale sales tax, and case sales tax.

(4) Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", shall be used by wholesalers of distilled spirits to itemize monthly receipts of distilled spirits from all sources.

(5) Revenue Form 73A529, "Consignor's Report of Alcoholic Beverages Shipped", shall be used by consignors of distilled spirits and wine to report trafficking in alcoholic beverages during the previous month.

(6) Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped", shall be used by consignors of distilled spirits and wine to report trafficking in alcoholic beverages during the previous month.

(7) Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", shall be used by transporters of distilled spirits, wine, and malt beverages to report shipments of alcoholic beverages delivered into the state during the previous month.

(8) Revenue Form 73A535, "Report of Destruction of Alcoholic Beverages", shall be used by governmental officials to certify quantities of tax-paid alcoholic beverages no longer suitable for consumption that are destroyed in the official's presence.

(9) Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", shall be used by wine wholesalers to report liability for wine excise tax and wine wholesale sales tax.

(10) Revenue Form 73A576, "Vintner's Wine Report", shall be used by vintners to report liability for wine excise tax and wine wholesale sales tax.

(11) Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", shall be used by wine wholesalers to report shipments of wine received during the previous month.

(12) Revenue Form 73A626, "Brewer's Monthly Report Schedule", shall be used by brewers of malt beverages to report sales and distribution of malt beverages into Kentucky.

(13) Revenue Form 73A627, "Beer Distributor's Monthly Re-

port", shall be used by beer distributors to report shipments of malt beverages received during the previous month.

(14) Revenue Form 73A628, "Distributors Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report", shall be used by distributors of malt beverages to report liability for malt beverage excise tax and malt beverage wholesale sales tax.

(15) Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", shall be used by beer distributors to report shipments of malt beverages to federal military agencies.

Section 2. Bank Franchise Tax - Required Forms. (1) Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", shall be used by financial institutions which are regularly engaged in business in Kentucky to register for the Kentucky Bank Franchise Tax.

(2) Revenue Form 73A801(P), "2007[~~2006~~] Kentucky Bank Franchise Tax Forms and Instructions", shall be the packet used by financial institutions to register for the Kentucky Bank Franchise Tax, to determine the net capital and annual tax due, and to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

(3) Revenue Form 73A801, "Bank Franchise Tax Return", shall be used by financial institutions to determine the net capital and Kentucky Bank Franchise Tax due for the calendar year 2007 [~~2006~~].

(4) Revenue Form 73A802, "Application for 90-Day Extension of Time to File Kentucky Bank Franchise Tax Return", shall be used by financial institutions to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

Section 3. Cigarette Tax - Required Forms. (1) Revenue Form 73A181, "Cigarette Licenses and Other Tobacco Product Account Number Application", shall be used by persons interested in acting as a cigarette wholesaler, subjobber, vending machine operator, transporter, or unclassified acquirer to apply for the necessary license.

(2) Revenue Form 73A190, "Cigarette License", shall be used by the Department of Revenue to give evidence to cigarette wholesalers, subjobbers, vending machine operators, transporters, and unclassified acquirers that they have been granted the appropriate license.

(3) Revenue Form 73A404, "Cigarette Tax Stamps Order Form", shall be used by licensed cigarette wholesalers or unclassified acquirers to order cigarette tax stamps.

(4) Revenue Form 73A406, "Cigarette Tax Credit Certificate", shall be used by the Department of Revenue to give credit to a licensed cigarette wholesaler or unclassified acquirer for cigarette tax stamps returned or destroyed.

(5) Revenue Form 73A409, "Cigarette Evidence/Property Receipt", shall be used by compliance officers and the property owner to acknowledge custody of seized goods.

(6) Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler", shall be used by a licensed cigarette wholesaler to report cigarette inventory, tax stamp reconciliation, and liability for cigarette administration and enforcement fee and to report cigarettes that were purchased from manufacturers and importers of cigarettes who did not sign the Master Settlement Agreement (nonparticipating manufacturers).

(7) Revenue Form 73A420(I), "Instructions for Monthly Report of Cigarette Wholesaler", shall be used by cigarette wholesalers and nonparticipating manufacturers to file Revenue Form 73A420.

(8) Revenue Form 73A421, "Cigarette Inventory Floor Tax", shall be used by cigarette retailers or licensees to report cigarette inventories and the one-time inventory floor tax.

(9) Revenue Form 73A422, "Monthly Report of Other Tobacco Products and Snuff", shall be used by cigarette licensees to report gross receipts from other tobacco products, total units of snuff sold, and tax liability.

(10) Revenue Form 73A423, "Monthly Report of Cigarette Papers", shall be used by vendors or wholesalers to file the tax owed on rolling papers sold.

(11) Revenue Form 73B401, "Cigarette Tax Credit Claim Wholesaler's Affidavit",[,]shall be signed by a licensed cigarette wholesaler attesting that the reported tax evidence did or did not have the twenty-seven (27) cents surtax paid on it.

Section 4. Health Care Provider Tax. (1) Revenue Form 73A060, "Health Care Provider Tax Return" shall be used by taxpayers to file the gross revenues and compute the tax for the health care provider tax.

(2) Revenue Form 73A060(I), "Instructions - Kentucky Health Care Provider Tax Return" shall be used by the taxpayers to determine if the service they provide is taxable, what tax rate is applicable, and which line to use for reporting.

(3) Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration" shall be completed by the taxpayer to register for the health care provider tax.

Section 5. Inheritance Tax - Required Forms. (1) Revenue Form 92A101, "**Kentucky** Nonresident Inheritance and Estate Tax **Return**[~~Forms and Instructions~~]", shall be used by the personal representative or beneficiary of a nonresident estate to establish the inheritance and estate tax due the Commonwealth for dates of death on or after July 1995.

(2) Revenue Form 92A110, "Real Estate Data Report", shall be used by the personal representative or beneficiary of an estate on each piece of real estate to provide a description and valuation of **the**[~~said~~] property for dates of death on July 1, 1995 through June 30, 1998.

(3) Revenue Form 92A120, "**Kentucky** Resident Inheritance and Estate Tax **Return**[~~Forms and Instructions~~]", shall be used by the personal representative or beneficiary of a resident estate to establish the inheritance and estate tax due the Commonwealth for dates of death on or after July 1995.

(4)[~~(3)~~] Revenue Form 92A120-S, "Inheritance and Estate Tax Return - Short Form" shall be used by the personal representative or beneficiary of a resident estate to establish the appropriate inheritance and estate tax due the Commonwealth.

(5)[~~(4)~~] Revenue Form 92A120-X, "Kentucky Spousal Inheritance Tax Return", shall be used by the personal representative or beneficiary of a resident estate to establish there is no inheritance and estate tax due the Commonwealth.

(6)[~~(5)~~] Revenue Form 92A121, "Acceptance of Inheritance and Estate Tax Return", shall be sent by the inheritance and estate tax section to the personal representative or beneficiary of an estate to certify that all death taxes due the Commonwealth have been paid.

(7)[~~(6)~~] Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(8) Revenue Form 92A200PKT, "Kentucky Inheritance and Estate Tax Forms and Instructions", **shall**[~~may~~] be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth for deaths occurring on or after July 1, 1998.

(9)[~~(7)~~] Revenue Form 92A201, "Kentucky Inheritance Tax Return No Tax Due", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish that there is no inheritance and estate tax due the Commonwealth.

(10)[~~(8)~~] Revenue Form 92A202, "Kentucky Estate Tax Return"[,]shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the estate tax due the Commonwealth.

(11)[~~(9)~~] Revenue Form 92A204, "Real Estate Valuation Information Form", shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purposes.

(12)[~~(10)~~] Revenue Form 92A205, "Kentucky Inheritance Tax Return (Simplified Format)", shall be used by the personal representative or beneficiary of a small or uncomplicated resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(13)[~~(11)~~] Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax through Installments", shall be used by the beneficiary or beneficiaries of an estate to defer the payment of inheritance tax through installments.

(14)[~~(12)~~] Revenue Form 92A929, "Notice of Agricultural and

Horticultural Inheritance Tax Lien", shall be used to request the county clerk to place a lien on a particular piece of real estate due to the personal representative, on behalf of an estate, electing the use of agricultural or horticultural value.

(15)[~~(13)~~] Revenue Form 92A930, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk to release the five (5) year lien that guaranteed collection of tax if the terms of the agreement are not met or if the five (5) years have [~~has~~] expired.

(16)[~~(14)~~] Revenue Form 92A931, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk to do a partial release of the five (5) year lien that guaranteed collection of tax if the terms of the agreement are not met or if the five (5) years have [~~has~~] expired.

(17)[~~(15)~~] Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", shall be given to the taxpayer when tax payment is received in the office.

(18)[~~(16)~~] Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", shall be used by a personal representative or beneficiary to elect to qualify terminable interest property or power of appointment property if proper criteria exists.

(19)[~~(17)~~] Revenue Form 92F001, "Blanket Lien Release", shall be used to access lock boxes without requiring written consent or presence of the Department of Revenue or local PVA official and **shall provide**[~~provides~~] a blanket lien release on all property owned by any decedent.

(20)[~~(18)~~] Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", shall be used by the general public for information purposes concerning Kentucky inheritance and estate tax.

Section 6. Insurance Tax - Required Forms. (1) Revenue Form 74A100, "Insurance Premiums Tax Return", shall be used by domestic and foreign life insurance companies, stock insurance companies other than life, and foreign mutual companies other than life to report liability for domestic and foreign life insurance tax, other than life insurance tax, fire insurance tax and retaliatory taxes and fees.

(2) Revenue Form 74A101, "Insurance Premiums Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies", shall be used by domestic mutual, domestic mutual fire or cooperative and assessment fire insurance companies to report liability for premiums tax on amounts paid to authorized and unauthorized reinsurance companies.

(3) Revenue Form 74A105, "Unauthorized Insurance Tax Return", shall be used by insurers not authorized to conduct business in the Commonwealth of Kentucky by the **Department**[~~Office~~] of Insurance to report liability for insurance premiums tax.

(4) Revenue Form 74A106, "Insurance Premiums Tax Return - Captive Insurer", shall be completed by domestic and foreign insurance companies to report captive insurance tax.

(5) Revenue Form 74A110, "Kentucky Estimated Insurance Premiums Tax for Calendar Year **2008**[~~2007~~]", shall be used by insurance companies to remit estimated premiums tax payments.

(6) Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", shall be used by domestic life insurance companies to make an irrevocable election to pay state capital and reserves tax, premiums tax, and the county and city capital and reserves tax or to pay state premiums tax and local government premiums tax.

(7) Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurer", shall be used by domestic mutual, cooperative and assessment fire insurers to report liability for insurance premium surcharge.

(8) Revenue Form 74A118, "Monthly Insurance Surcharge Report", shall be used by domestic, foreign and alien insurers, other than life and health insurers, to report liability for an insurance premium surcharge.

Section 7. Legal Process - Required Forms. (1) Revenue Form 73A200, "County Clerk's Monthly Report of Legal Process Tax Receipts", shall be used by the county clerks to report the county's liability for the legal process tax and spouse abuse shelter fund.

(2) Revenue Form 73A201, "Quarterly Report of Affordable Housing Trust Fund Fee", shall be used by the county clerks to report the county's liability for the affordable housing trust fund fee.

Section 8. Marijuana and Controlled Substance - Required Forms. (1) Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", shall be used by the Kentucky Department of Revenue to provide persons ordering marijuana and controlled substance tax stamps with the appropriate instructions on affixing the stamps.

(2) Revenue Form 73A702, "Notice of Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", shall be used by law enforcement officials to notify the Kentucky Department of Revenue and county clerks of the seizure of marijuana and other controlled substances.

(3) Revenue Form 73A703, "Marijuana or Controlled Substance Stamp Order Form", shall be used by taxpayers to order stamps for marijuana or controlled substances.

Section 9. Motor Fuels - Required Forms. (1) Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the public boat dock refund applicant was not entitled.

(2) Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", shall be used by a public boat dock owner to apply for approval to sell watercraft refund motor fuels. [~~to make application.~~]

(3) Revenue Form 72A006, "Motor Fuel Tax Refund Application - Public Boat Dock", shall be used by a public boat dock refund applicant to make application for refund of liquid fuel tax on purchases of liquid fuel delivered directly to the fuel tanks attached to the watercraft and used exclusively in watercraft motors.

(4) Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", shall be used by an approved surety to establish surety obligation upon the payment of all taxes, penalties, and fines for which **the** designated refund applicant may become liable under KRS 138.344 to 138.355.

(5) Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", shall be used by licensed gasoline or special fuels dealers to report and remit monthly petroleum storage tank environmental assurance fee amounts due.

(6) Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", shall be used by the Department of Revenue to issue Kentucky Motor Fuels Tax Refund Permits.

(7) Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", shall be used by Kentucky Motor Fuels Tax Refund Permit holders to apply for refund of Kentucky motor fuel tax paid on nonhighway motor fuel.

(8) Revenue Form 72A065, "Aviation Gasoline Tax Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the aviation gasoline refund applicant was not entitled.

(9) Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", shall be used by an aviation gasoline refund applicant to make application for refund of Kentucky tax paid on gasoline used in operation of aircraft.

(10) Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", shall be used by aviation gasoline tax refund applicants seeking approval to receive a refund of aviation gasoline tax.

(11) Revenue Form 72A071, "Motor Fuels Tax Refund Bond (City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs)", shall be used by a surety company authorized to do business in Kentucky to establish surety obligation upon the payment to the Commonwealth of any refunds to which a city and suburban bus, nonprofit bus, senior citizen transportation or tax-

icab refund applicant was not entitled.

(12) Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation, and Taxicab Companies", shall be used by refund applicants to make application for refund of Kentucky tax paid on fuel used in the operation of city and suburban bus companies, nonprofit bus companies, senior citizen transportation, and taxicab companies.

(13) Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation and Taxicabs", shall be used by qualifying applicants to make application for approval to receive a refund of tax on motor fuels consumed by city and suburban buses, nonprofit buses, senior citizen transportation, and taxicabs.

(14) [~~Revenue Form 72A075, "Receipts of Unreported Alcohol or Other Additives", shall be used by licensed gasoline dealers to report receipt of unreported alcohol or other additives.~~

~~(15) Revenue Form 72A077, "Licensed Gasoline Dealer's Monthly Report of Gasoline Sales to U.S. Government", shall be used by licensed gasoline dealers to report gasoline sales to U.S. government on their monthly reports.~~

~~(16)~~] Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", shall be used by licensed gasoline or special fuels dealers to make claim for accountable loss of motor fuel.[~~(17) Revenue Form 72A080, "Report of Gasoline Received from Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report receipt of tax free gasoline from licensed Kentucky dealers on the gasoline dealer's monthly report.~~

~~(18) Revenue Form 72A081, "Report of Gasoline Imported from Other States" shall be used by licensed gasoline dealers to report gasoline imported from other states, on the gasoline dealer's monthly report.~~

~~(19) Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky("Kentucky Tax Paid to Supplier"), shall be used by licensed gasoline dealers to report gasoline imported into Kentucky if the Kentucky tax was paid to the supplier, on the gasoline dealer's monthly report.~~

~~(20) Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky (Kentucky Tax Paid by Supplier", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky if the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report.~~

~~(21) Revenue Form 72A082, "Report of Gasoline Imported", shall be used by licensed gasoline dealers to report gasoline imported, on the gasoline dealer's monthly report.~~

~~(22)Terminal or Refinery", shall be used by licensed gasoline dealers to report gasoline received from terminal or refinery, on the licensed gasoline dealer's monthly report.~~

~~(23) Revenue Form 72A084, "Report of Gasoline Exported", shall be used by licensed gasoline dealers to report gasoline exported, on the gasoline dealer's monthly report.~~

~~(24) Revenue Form 72A085, "Report of Gasoline Sold to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report gasoline sold to licensed Kentucky dealers, on the gasoline dealer's monthly report.~~

~~(25) Revenue Form 72A086, "Report of Gasoline Withdrawals from Terminal Storage", shall be used by licensed gasoline dealers to report gasoline withdrawals from terminal storage, on the gasoline dealer's monthly report.~~

~~(26) Revenue Form 72A087, "Report of Gasoline Withdrawals to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report withdrawals of gasoline to licensed Kentucky dealers, on the gasoline dealer's monthly report.~~

~~(27) Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold for Export", shall be used by licensed gasoline dealers to report withdrawals of gasoline exported or sold for export, on the gasoline dealer's monthly report.~~]

(15) [~~(28)~~] Revenue Form 72A089, "Licensed Gasoline Dealer's Monthly Report", shall be used by licensed gasoline dealers to report and remit monthly gasoline tax.

[~~(29) Revenue Form 72A090, "Gasoline Dealer's Monthly Terminal Storage Report", shall be used by licensed gasoline dealers to report monthly terminal storage activity, on the gasoline dealer's monthly report.~~

~~(30) Revenue Form 72A091, "Gasoline Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by gasoline dealers to claim a credit for gasoline sold for agricultural purposes to holders of Kentucky motor fuels tax refund permits.~~]

(16)[~~(31)~~] Revenue Form 72A098, "Transporter's Report of Motor Fuel Delivered", shall be used by licensed transporters to report a summation of monthly motor fuel deliveries.

(17) Revenue Form 72A099, "Transporter's Report", shall be used by licensed transporters to report monthly motor fuel deliveries.[~~(32) Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", shall be used by licensed gasoline dealers to report and remit estimated gasoline tax monthly payments.~~

~~(33) Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Government", shall be used by licensed special fuels dealers to report special fuels sales to U.S. government, on the special fuels dealer's monthly report.~~]

(18) [~~(34)~~] Revenue Form 72A110, "Certification of Motor Fuels Nonhighway Use", shall be used by qualifying entities to certify the nonhighway use of special fuels. The certification shall be maintained by the licensed special fuels dealer.[~~(35) Revenue Form 72A124, "Report of Kerosene and Other Receipts Received and Blended", shall be used by licensed special fuels dealers to report kerosene received and blended, on the licensed special fuels dealer's monthly report.~~

~~(36) Revenue Form 72A127, "Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government Agency Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to state or local government agencies for nonhighway special fuels use for a specific monthly period.~~

~~(37) Revenue Form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Charitable or Educational Organization Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to nonprofit religious, charitable or education organizations for nonhighway special fuels use for a specific monthly period.~~

~~(38) Revenue Form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit", shall be used by licensed special fuels dealers to report special fuels sold for commercial off-road use to holders of Kentucky motor fuels tax refund permits who issued to the dealer a Certification of Motor Fuels Nonhighway Use, Form 72A110.~~

~~(39) Revenue Form 72A131, "Special Fuels Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to motor fuels tax refund permit holders for agricultural special fuels use for a specific monthly period.~~

~~(40) Revenue Form 72A132, "Special Fuels Schedule of Sales Qualifying for Residential Heating Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to consumers for heating a personal residence for a specific monthly period.~~]

(19)[~~(41)~~] Revenue Form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", shall be used by a person desiring to qualify for a refund of motor fuel excise tax paid for nonhighway use.

(20)[~~(42)~~] Revenue Form 72A138, "Licensed Special Fuels Dealer's Monthly Report", shall be used by a licensed special fuels dealer to report the total special fuels gallons received and distributed for a specific monthly period.

[~~(43) Revenue Form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list every special fuels shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.~~

~~(44) Revenue Form 72A154, "Report of Special Fuels Imported from Other States", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state sources on which the Kentucky special fuels excise tax was not precollected by the supplier for a specific monthly period.~~

~~(45) Revenue Form 72A154-P, "Purchaser's Report Special Fuels Imported (Kentucky Tax Paid to Supplier)", shall be used by a licensed special fuels dealer to list every special fuels shipment~~

~~imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was paid to the supplier for a specific monthly period.~~

~~(46) Revenue Form 72A154-S, "Supplier's Report Special Fuels Imported (Kentucky Tax Paid by Supplier)", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was charged to the dealer's customer for a specific monthly period.~~

~~(47) Revenue Form 72A155, "Report of Special Fuels Exported or Sold for Export", shall be used by a licensed special fuels dealer to list of every shipment exported to another state for a specific monthly period.~~

~~(48) Revenue Form 72A156, "Report of Special Fuels Sold to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to other licensed special fuels dealers for a specific monthly period.~~

~~(49) Revenue Form 72A159, "Report of Special Fuels Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to a valid Motor Fuels Tax Refund Permit holder for exclusive use by railroad companies for nonhighway purposes for a specific monthly period.~~

~~(50) Revenue Form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", shall be used by a licensed special fuels dealer to report the special fuels tax liability for a specific monthly period and calculate ninety-five (95) percent of the applicable tax due for remittance by the due date.~~]

(21)[~~(51)~~] Revenue Form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", shall be used by a licensed liquefied petroleum gas dealer to report all gallons of liquefied petroleum gas dispensed into the fuel tanks of licensed motor vehicles for a specific monthly period. [~~(52) Revenue Form 72A162, "Report of Liquefied Petroleum Gas Motor Fuels", shall be used by a licensed liquefied petroleum gas dealer to list every shipment of liquefied petroleum gas placed into the fuel tank of a licensed motor vehicle for a specific monthly period.~~]

(22)[~~(53)~~] Revenue Form 72A170, "Monthly Terminal Report", shall be used by a licensed motor fuels dealers to summarize all Kentucky terminal receipt and disbursement activity for a specific monthly period.

(23) Revenue Form 72A178, "Distributor's Schedule of Disbursements", shall be used by motor fuels dealers to report all disbursements for a specific monthly period.

(24) Revenue Form 72A179, "Distributor's Schedule of Receipts", shall be used by gasoline and special fuels dealers to report all receipts for a specific monthly period.

(25) Revenue Form 72A180, "**Schedule 15A-**Terminal Operator Schedule of Receipts", shall be used by gasoline and special fuels terminal operators to report all receipts for a specific monthly period.

(26) Revenue Form 72A181, "**Schedule 15B-**Terminal Operator Schedule of **Disbursement**[~~Disbursements~~]", shall be used by gasoline and special fuels terminal operators to report all disbursements for a specific monthly period.

[~~(54) Revenue Form 72A171, "Report of Special Fuels Imported", shall be used by a licensed special fuels dealer to list all shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.~~

~~(55) Revenue Form 72A172, "Report of Special Fuels Received from Terminal or Refinery", shall be used by a licensed special fuels dealer to list all shipments received from other Kentucky terminals and placed into Kentucky terminal storage for a specific monthly period.~~

~~(56) Revenue Form 72A173, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list all shipments withdrawn to other licensed special fuels dealers for a specific monthly period.~~

~~(57) Revenue Form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", shall be used by a licensed special fuels dealer to provide a list of every shipment withdrawn from terminal storage and exported to another state for a specific monthly period.~~

~~(58) Revenue Form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", shall be used by a licensed special fuels dealer to provide total gallon withdrawals from his terminal storage facility or facilities for a specific monthly period.~~]

[~~(59) Revenue Form 72A200, "Special Fuels Dealer's Schedule of Dyed Diesel Credits and Tax Due", shall be used by licensed special fuels dealers to report the total dyed diesel gallons received and distributed for a specific monthly period.~~

~~(60) Revenue Form 72A210, "Report of Dyed Diesel Received from Licensed Kentucky Dealers", shall be used by licensed special fuels dealer to list every dyed diesel shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.~~

~~(61) Revenue Form 72A211, "Report of Dyed Diesel Imported from Other States", shall be used by licensed special fuels dealer to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.~~

~~(62) Revenue Form 72A215, "Report of Kerosene and Other Receipts Received and/or Blended with Dyed Diesel", shall be used by licensed special fuels dealers to report kerosene and any other receipts received or blended with dyed diesel.~~

~~(63) Revenue Form 72A220, "Dyed Diesel Monthly Terminal Storage Report", shall be used by licensed special fuels dealers to summarize all dyed diesel Kentucky terminal receipts and disbursements activity for a specific monthly period.~~

~~(64) Revenue Form 72A221, "Report of Dyed Diesel Imported", shall be used by licensed special fuels dealers to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.~~

~~(65) Revenue Form 72A222, "Report of Dyed Diesel Received from Terminal or Refinery", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel received from a terminal or refinery located in Kentucky into terminal storage.~~

~~(66) Revenue Form 72A223, "Report of Dyed Diesel Withdrawals to Licensed Kentucky Dealers", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals from terminal storage going to licensed Kentucky dealers.~~

~~(67) Revenue Form 72A224, "Report of Dyed Diesel Withdrawals Exported or Sold for Export", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals either exported or sold for export from terminal storage.~~

~~(68) Revenue Form 72A225, "Report of Dyed Diesel Withdrawals from Terminal Storage", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals from terminal storage.~~

~~(69) Revenue Form 72A230, "Report of Dyed Diesel Exported or Sold for Export", shall be used by licensed special fuels dealers to report dyed diesel gallons exported or sold for export into another state.~~

~~(70) Revenue Form 72A231, "Report of Dyed Diesel Sold to Licensed Kentucky Dealers", shall be used by licensed special fuels dealers to report dyed diesel sold to licensed Kentucky dealers.~~

~~(71) Revenue Form 72A232, "Statement of Claim for Accountable Loss of Dyed Diesel", shall be used by licensed special fuels dealers to report approved accountable loss of dyed diesel gallons.~~

~~(72) Revenue Form 72A233, "Report of Dyed Diesel Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by licensed special fuels dealers to report dyed diesel sold for exclusive use by railroad companies for nonhighway purposes.~~

~~(73) Revenue Form 72A234, "Licensed Special Fuels Dealer's Monthly Report of Dyed Diesel Sales to U.S. Government", shall be used by licensed special fuels dealers to report dyed diesel sold to the U.S. government.~~

~~(74) Revenue Form 72A240, "Special Fuels Dealer's Schedule of Dyed Diesel Sales Qualifying for Nonhighway Use Tax Credit", shall be used by licensed special fuels dealers to report dyed diesel sold for nonhighway use.~~]

(27)[~~(75)~~] Revenue Form 72A300, "Tax Registration Application for Motor Fuels License", shall be used by an applicant to register for a gasoline dealer's, special fuels dealer's, liquefied petro-

leum gas dealer's, motor fuel transporter's, or terminal owner-operator's license.

(28)[~~(76)~~] Revenue Form 72A301, "Motor Fuels License Bond", shall be executed by a corporation authorized to transact surety business in Kentucky on behalf of a licensee to insure payment of taxes, penalties, and interest for which a dealer or transporter may become liable.

(29)[~~(77)~~] Revenue Form 72A302, "Motor Fuels License", shall be used by the Department of Revenue to issue a license to the qualified applicant in gasoline, special fuels, motor fuels transporter, or liquefied petroleum gas dealer.

(30)[~~(78)~~] Revenue Form 72A303, "Election Application/Cancellation Form", shall be used by gasoline and special fuels dealers to elect to pledge a financial instrument other than a corporate surety bond.

(31) Revenue Form 72A304, "Motor Fuel Tax Electronic Filing Application", shall be used by motor fuels dealers to choose an electronic filing method.

Section 10. Motor Vehicle Usage Tax - Required Forms. (1) Revenue Form 71A010, "Motor Vehicle Usage Tax - Vehicle Condition Refund Application", shall be used by a taxpayer to apply for a refund of motor vehicle usage tax paid under KRS 138.150(16) based on the condition of the vehicle.

(2) Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", shall be presented to the county clerk to establish taxable value upon the first registration or transfer of a motor vehicle for motor vehicle usage tax purposes.

(3) Revenue Form 71A101, "Motor Vehicle Usage Tax **Multi-Purpose**[~~Multi-purpose~~] Form", shall be presented to the county clerk by a vehicle owner to:

(a) Claim one (1) of several exemptions;

(b) Establish "retail price" if prescribed by the department; or

(c) Establish "retail price" of new vehicles with equipment or adaptive devices added to facilitate or accommodate handicapped persons.

(4) Revenue Form 71A102, "Questionnaire", shall be completed by selected motor vehicle buyers and sellers providing specific information regarding a vehicle transaction.

(5) Revenue Form 71A151, "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification", shall be presented to the county clerk by a certified resident of an enterprise zone to claim exemption from the motor vehicle usage tax upon the first registration or transfer of a motor vehicle.

(6) Revenue Form 71A174, "County Clerk's Adjusted Recapitulation of Motor Vehicle Usage Tax - Weekly Report", shall be submitted to the Department of Revenue by a county clerk as a recapitulation form to list all motor vehicle usage tax receipts, adjusted for corrections and commissions for a given week.

(7) Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report", shall be submitted to the Department of Revenue by a county clerk to report motor vehicle usage tax collections if an extension of time to file the computer generated weekly recapitulation report is requested.

(8) Revenue Form 71F004, "Motor Vehicle Usage Tax - Loaner-Rental Program", shall be used by motor vehicle dealers for instructions on how to register for the Loaner-Rental Program and file monthly reports.

(9) Revenue Form 72A007, "Affidavit of Nonhighway Use", shall be used by taxpayers attesting that a motor vehicle will not be operated upon Kentucky's public highways.

(10) Revenue Form 73A054, "Kentucky Application For Dealer Loaner/Rental Vehicle Tax", shall be used by motor vehicle dealers to register to participate in the Loaner/Rental Vehicle Tax program.

(11) Revenue Form 73A055, "Monthly Report For Dealer Loaner/Rental Vehicle Tax", shall be used by motor vehicle dealers to report tax due on vehicles dedicated for use in the Loaner/Rental Vehicle Tax program.

(12) Revenue Form 73A070, "Motor Vehicle Usage Tax Request for Extension of Deposit/ACH Call-in", shall be used by county clerks for extension of ACH call-in deposits.

Section 11. Racing Taxes - Required Form. Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", shall be used by race tracks licensed by the Kentucky Horse Racing **Commission**[~~Authority~~] to report liability for the pari-mutuel tax and to report admissions to the race track.

Section 12. Transient Room Tax - Required Form[s]. Revenue Form 73A850, "Transient Room Tax Monthly Return", shall be used by all persons, companies, corporations, groups or organizations doing business as motor courts, motels, hotels, inns, tourist camps, or like or similar accommodations businesses (excluding campgrounds) to report the taxable rent amount and transient room tax liability.

Section 13. Utility Gross Receipts License Tax - Required Forms. (1) Revenue Form 73A900, "Utility Gross Receipts License Tax Application", shall be used by utility service providers, consumers, and Energy Direct Pay (EDP) account holders to apply for a utility gross receipts license tax account number.

(2) Revenue Form 73A901, "Utility Gross Receipts License Tax Return",[~~,~~]shall be used by **UGRLT**[~~UGRLT~~] account number holders to report total gross receipts, school district allocation, and tax liability.

(3) Revenue Form 73A901(I), "Instructions for Utility Gross Receipts License Tax Return", shall be used by UGRLT[~~UGRL~~] account number holders to complete the Utility Gross Receipts License Tax Return.

(4) Revenue Form 73A902, "Utility Gross Receipts License Tax (UGRLT) Energy Exemption Annual Return", shall be used by **UGRLT**[~~UGRLT~~] account number holders to apply for an exemption from the utility gross receipts license tax.

(5) Revenue Form 73A902-V, "Kentucky Utility Gross Receipts License Tax Payment Voucher", shall be used by **UGRLT**[~~UGRLT~~] account number holders to remit payment of the utility gross receipts license tax.

(6) Revenue Form 73F010, "Utility Gross Receipts License Tax", shall be used by utility providers, Energy Direct Pay (EDP) holders, and consumers for instruction on how to register and file monthly reports.

Section 14. Waste Tire Tax - Required Form. Revenue Form 73A051, "Motor Vehicle Tire Fee Report"[~~,~~]shall be used by businesses making retail sales of new motor vehicle tires to report liability for motor vehicle tire fees and to report the number of waste tires received from customers.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Alcoholic beverage tax - referenced material:

1. Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", November[~~,~~] 2006;

2. Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", November[~~,~~] 2007; [~~2006;~~]

3. Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", January 2007; [~~November, 2006;~~]

4. Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", November[~~,~~] 2006;

5. Revenue Form 73A529, "Consignor's Report of Alcoholic Beverages Shipped", January 2007; [~~November, 2006;~~]

6. Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped"[~~,~~]November[~~,~~] 2006;

7. Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", January 2007; [~~November, 2006;~~]

8. Revenue Form 73A535, "Report of Destruction of Alcoholic Beverages", December[~~,~~] 2006;

9. Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", January 2007; [~~November, 2006;~~]

10. Revenue Form 73A576, "Vintner's Wine Report", April 2007; [~~November, 2006;~~]

11. Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", November[~~,~~] 2006;

12. Revenue Form 73A626, "Brewer's Monthly Report Schedule", November[~~,~~] 2006;

13. Revenue Form 73A627, "Beer Distributor's Monthly Report", December[~~,~~] 2006;

14. Revenue Form 73A628, "Distributor's Monthly Malt Beve-

rage Excise Tax and Wholesale Sales Tax Report", November[,] 2006; and

15. Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", November[,] 2006;

(b) Bank franchise tax - referenced material:

1. Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", January[,] 2008; [~~2007;~~]

2. Revenue Form 73A801(P), "**2007**[~~2006~~] Kentucky Bank Franchise Tax Forms and Instructions", January[,] 2008; [~~2007;~~]

3. Revenue Form 73A801, "Bank Franchise Tax Return", January[,] 2008; **and** [~~2007;~~]

4. Revenue Form 73A802, "Application for 90-Day Extension of Time to File Kentucky Bank Franchise Tax Return", January[,] 2008; [~~2007;~~]

(c) Cigarettes tax - referenced material:

1. Revenue Form 73A181, "Cigarette Licenses and Other Tobacco Product Account Number Application", December[,] 2006;

2. Revenue Form 73A190, "Cigarette License", December 2006; [~~April, 1988;~~]

3. Revenue Form 73A404, "Cigarette Tax Stamps Order Form", November[,] 2005;

4. Revenue Form 73A406, "Cigarette Tax Credit Certificate", May[,] 2005;

5. Revenue Form 73A409, "Cigarette Evidence/Property Receipt", November[,] 2003;

6. Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler", August[,] 2006;

7. Revenue Form 73A420(I), "Instructions for Monthly Report of Cigarette Wholesaler",[,]June[,] 2002;

8. Revenue Form 73A421, "Cigarette Inventory Floor Tax", May[,] 2005;

9. Revenue Form 73A422, "Monthly Report of Other Tobacco Products and Snuff", June[,] 2006;

10. Revenue Form 73A423, "Monthly Report of Cigarette Papers", June[,] 2006; and

11. Revenue Form 73B401, "Cigarette Tax Credit Claim Wholesaler's Affidavit", November[,] 2006;

(d) Health care provider tax - referenced material:

1. Revenue Form 73A060, "Health Care Provider Tax Return", July[,] 2005;

2. Revenue Form 73A060(I), "Instructions - Kentucky Health Care Provider Tax Return", July[,] 2005; and

3. Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration", December[,] 2006;

(e) Inheritance tax - referenced material:

1. Revenue Form 92A101, "Kentucky Nonresident Inheritance and Estate Tax Return", May 1995;

2. Revenue Form 92A110, "Real Estate Data Report", May 1995;

3.[~~2.~~] Revenue Form 92A120, "Kentucky Resident Inheritance and Estate Tax Return", May 1995;

4.[~~3.~~] Revenue Form 92A120-S, "Inheritance and Estate Tax Return-Short Form", May[,] 1995;

5.[~~4.~~] Revenue Form 92A120-X, "Kentucky Spousal Inheritance Tax Return", October[,] 1992;

6.[~~5.~~] Revenue Form 92A121, "Acceptance of Inheritance and Estate Tax Return", March 2008; [~~March, 1986;~~]

7.[~~6.~~] Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", July[,] 2003;

8. Revenue Form 92A200PKT, "Kentucky Inheritance and Estate Tax Forms and Instructions", August **2008**[~~2005~~];

9.[~~7.~~] Revenue Form 92A201, "Kentucky Inheritance Tax Return No Tax Due", July[,] 2003;

10.[~~8.~~] Revenue Form 92A202, "Kentucky Estate Tax Return", July[,] 2003;

11[~~9.~~] Revenue Form 92A204, "Real Estate Valuation Information Form", July[,] 2003;

12.[~~10.~~] Revenue Form 92A205, "Kentucky Inheritance Tax Return (Simplified Format)", July[,] 2003;

13.[~~11.~~] Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax Through Installments", July[,] 2003;

14.[~~12.~~] Revenue Form 92A929, "Notice of Agricultural and Horticultural Inheritance Tax Lien", March[,] 1991;

15.[~~13.~~] Revenue Form 92A930, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", March[,] 1990;

16.[~~14.~~] Revenue Form 92A931, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", July[,] 1983;

17.[~~15.~~] Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", March 2008;[~~December, 1984;~~]

18.[~~16.~~] Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", May[,] 1995;

19.[~~17.~~] Revenue Form 92F001, "Blanket Lien Release", March 2008;[~~July, 2003;~~] and

20.[~~18.~~] Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", March 2003;

(f) Insurance tax - referenced material:

1. Revenue Form 74A100, "Insurance Premiums Tax Return", November[,] 2007;[~~2005;~~]

2. Revenue Form 74A101, "Insurance Premiums Tax Return - Domestic Mutual, Domestic Mutual Fire[,] or Cooperative and Assessment Fire Insurance Companies", January 2008;[~~December, 2003;~~]

3. Revenue Form 74A105, "Unauthorized Insurance Tax Return", January 2008;[~~July, 2000;~~]

4. Revenue Form 74A106, "Insurance Premiums Tax Return - Captive **Insurer**[~~Insurers~~]", January 2008;[~~December, 2004;~~]

5. Revenue Form 74A110, "Kentucky Estimated Insurance Premiums Tax for Calendar year 2007", November[,]**2008**[~~2007~~];[~~2006;~~]

6. Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", December[,] 1998;

7. Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurer", January 2008;[~~July, 2000;~~] and

8. Revenue Form 74A118, "Monthly Insurance Surcharge Report", January 2008;[~~July, 2000;~~]

(g) Legal process - referenced material:

1. Revenue Form 73A200, "County Clerk's Monthly Report of Legal Process Tax Receipts", November[,] 2006; and

2. Revenue Form 73A201, "Quarterly Report of Affordable Housing Trust Fund Fee", June[,] 2006;

(h) Marijuana and controlled substance - referenced material:

1. Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", November[,] 2006;

2. Revenue Form 73A702, "Notice of Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", November 2006; [~~June, 2001;~~] and

3. Revenue Form 73A703, "Marijuana or Controlled Substance Stamp Order Form", November[,] 2006;

(i) Motor fuels - referenced material:

1. Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", August[,] 2006;

2. Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", December 2007; [~~August, 2006;~~]

3. Revenue Form 72A006, "Motor Fuel Tax Refund Application - Public Boat Dock", October[,] 2006;

4. Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", October 2006; [~~July, 1989;~~]

5. Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", October[,] 2006;

6. Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", July 2007; [~~August, 2006;~~]

7. Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", July 2007; [~~October, 2006;~~]

8. Revenue Form 72A065, "Aviation Gasoline Tax Refund Bond", October[,] 2006;

9. Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", August[,] 2006;

10. Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", December 2007; [~~August, 2006;~~]

11. Revenue Form 72A071, "Motor Fuels Tax Refund Bond

(City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs)", October[~~,~~] 2006;

12. Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation, and Taxicab Companies", August[~~,~~] 2005;

13. Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation, and Taxicabs", October[~~,~~] 2006;

[~~14. Revenue Form 72A075, "Receipts of Unreported Alcohol or Other Additives", August, 2005;~~

~~15. Revenue Form 72A077, "Licensed Gasoline Dealer's Monthly Report of Gasoline Sales to U.S. Government", October, 2006;~~]

14. [~~16.~~] Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", October[~~,~~] 2006;

[~~17. Revenue Form 72A080, "Report of Gasoline Received From Licensed Kentucky Dealers", October, 2006;~~

~~18. Revenue Form 72A081, "Report of Gasoline Imported from Other States", October, 2006;~~

~~19. Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky (Kentucky Tax Paid to Supplier)", October, 2006;~~

~~20. Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky (Kentucky Tax Paid by Supplier)", October, 2006;~~

~~21. Revenue Form 72A082, "Report of Gasoline Imported", October, 2006;~~

~~22. Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", October, 2006;~~

~~23. Revenue Form 72A084, "Report of Gasoline Exported", October, 2006;~~

~~24. Revenue Form 72A085, "Report of Gasoline Sold to Licensed Kentucky Dealers", October, 2006;~~

~~25. Revenue Form 72A086, "Report of Gasoline Withdrawals from Terminal Storage", October, 2006;~~

~~26. Revenue Form 72A087, "Report of Gasoline Withdrawals to Licensed Kentucky Dealers", October, 2006;~~

~~27. Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold for Export", October, 2006;~~]

15. [~~28.~~] Revenue Form 72A089, "Licensed Gasoline Dealer's Monthly Report", July 2007; [~~August, 2005;~~

~~29. Revenue Form 72A090, "Gasoline Dealer's Monthly Terminal Storage Report", October, 2006;~~

~~30. Revenue Form 72A091, "Gasoline Schedule of Sales Qualifying for Agricultural Tax Credit", October, 2006;~~]

16. [~~31.~~] Revenue Form 72A098, "Transporter's Report of Motor Fuel Delivered", July 2007; [~~October, 2006;~~]

17. Revenue Form 72A099, "Transporter's Report", July 2007;

[~~32. Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", August, 2006;~~

~~33. Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Government", October, 2006;~~]

18.[~~34.~~] Revenue Form 72A110, "Certification of Motor Fuels Nonhighway Use", December[~~,~~] 2005;

[~~35. Revenue Form 72A124, "Report of Kerosene and Other Receipts Received and/or Blended", October, 2006;~~

~~36. Revenue Form 72A127, "Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government Agency Credit", October, 2006;~~

~~37. Revenue Form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Charitable or Educational Organization Credit", October, 2006;~~

~~38. Revenue Form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit", October, 2006;~~

~~39. Revenue Form 72A131, "Special Fuels Schedule of Sales Qualifying for Agricultural Tax Credit", October, 2006;~~

~~40. Revenue Form 72A132, "Special Fuels Schedule of Sales Qualifying for Residential Heating Tax Credit", October, 2006;~~]

19.[~~41.~~] Revenue Form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", December 2007; [~~October, 2006;~~]

20.[~~42.~~] Revenue Form 72A138, "Licensed Special Fuels Dealer's Monthly Report", July 2007; [~~October, 2006;~~]

[~~43. Revenue Form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", October, 2006;~~

~~44. Revenue Form 72A154, "Report of Special Fuels Imported from Other States", October, 2006;~~

~~45. Revenue Form 72A154-P, "Purchaser's Report Special Fuels Imported (Kentucky Tax Paid to Supplier)" October, 2006;~~

~~46. Revenue Form 72A154-S, "Supplier's Report Special Fuels Imported (Kentucky Tax Paid by Supplier)", October, 2006;~~

~~47. Revenue Form 72A155, "Report of Special Fuels Exported or Sold for Export", October, 2006;~~

~~48. Revenue Form 72A156, "Report of Special Fuels Sold to Licensed Kentucky Dealers", October, 2006;~~

~~49. Revenue Form 72A159, "Report of Special Fuels Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", October, 2006;~~

~~50. Revenue Form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", October, 2006;~~]

21.[~~51.~~] Revenue Form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", July 2007; [~~October, 2006;~~]

[~~52. Revenue Form 72A162, "Report of Liquefied Petroleum Gas Motor Fuels", October, 2006;~~]

22.[~~53.~~] Revenue Form 72A170, "[~~Special Fuels Dealer's~~]Monthly Terminal[~~Storage~~] Report", July 2007; [~~October, 2006;~~

~~54. Revenue Form 72A171, "Report of Special Fuels Imported", October, 2006;~~

~~55. Revenue Form 72A172, "Report of Special Fuels Received from Terminal or Refinery", October, 2006;~~

~~56. Revenue Form 72A173, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", October, 2006;~~

~~57. Revenue Form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", October, 2006;~~

~~58. Revenue Form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", October, 2006;~~]

23. Revenue Form 72A178, "Distributor's Schedule of Disbursements", July 2007;

24. Revenue Form 72A179, "Distributor's Schedule of Receipts" July 2007;

25. Revenue Form 72A180, "**Schedule 15A-**Terminal Operator Schedule of Receipts", July 2007;

26. Revenue Form 72A181, "**Schedule 15B-**Terminal Operator Schedule of **Disbursement**[~~Disbursements~~]", July 2007;

[~~59. Revenue Form 72A200, "Special Fuels Dealer's Schedule of Dyed Diesel Credits and Tax Due", July, 2000;~~

~~60. Revenue Form 72A210, "Report of Dyed Diesel Received from Licensed Kentucky Dealers", July, 2000;~~

~~61. Revenue Form 72A211, "Report of Dyed Diesel Imported from Other States", July, 2000;~~

~~62. Revenue Form 72A215, "Report of Kerosene and Other Receipts Received and/or Blended with Dyed Diesel", July, 2000;~~

~~63. Revenue Form 72A220, "Dyed Diesel Monthly Terminal Storage Report", July, 2000;~~

~~64. Revenue Form 72A221, "Report of Dyed Diesel Imported", July, 2000;~~

~~65. Revenue Form 72A222, "Report of Dyed Diesel Received from Terminal or Refinery", July, 2000;~~

~~66. Revenue Form 72A223, "Report of Dyed Diesel Withdrawals to Licensed Kentucky Dealers", July, 2000;~~

~~67. Revenue Form 72A224, "Report of Dyed Diesel Withdrawals Exported or Sold for Export", July, 2000;~~

~~68. Revenue Form 72A225, "Report of Dyed Diesel Withdrawals from Terminal Storage", July, 2000;~~

~~69. Revenue Form 72A230, "Report of Dyed Diesel Exported or Sold for Export", July, 2000;~~

~~70. Revenue Form 72A231, "Report of Dyed Diesel Sold to Licensed Kentucky Dealers", July, 2000;~~

~~71. Revenue Form 72A232, "Statement of Claim for Accountable Loss of Dyed Diesel", July, 2000;~~

~~72. Revenue Form 72A233, "Report of Dyed Diesel Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", July, 2000;~~

~~73. Revenue Form 72A234, "Licensed Special Fuels Dealer's Monthly Report of Dyed Diesel Sales to U.S. Government", July,~~

~~2000;~~

~~74. Revenue Form 72A240, "Special Fuels Dealer's Schedule of Dyed Diesel Sales Qualifying for Nonhighway Use Tax Credit", July, 2000;~~]

27.[~~75.~~] Revenue Form 72A300, "Tax Registration Application for Motor Fuels License", May 2007; [~~October, 2005;~~]

28. [~~76.~~] Revenue Form 72A301, "Motor Fuels License Bond", October[,] 2006;

29.[~~77.~~] Revenue Form 72A302, "Motor Fuels License", July 2007; [~~July, 2006; and~~]

30.[~~78.~~] Revenue Form 72A303, "Election Application/Cancellation Form",[,]September[,] 2006; and

31. Revenue Form 72A304, "Motor Fuel Tax Electronic Filing Application", December 2007.

(j) Motor vehicle usage tax - referenced material:

1. Revenue Form 71A010, "Motor Vehicle Usage Tax - Vehicle Condition Refund Application[,]" August[,] 2006;

2. Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", August[,] 2006;

3. Revenue Form 71A101, "Motor Vehicle Usage Tax Multi-Purpose Form", April[,] 2005;

4. Revenue Form 71A102, "Questionnaire", August[,] 2000;

5. Revenue Form 71A151, "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification", October[,] 2005;

6. Revenue Form 71A174, "County Clerk's Adjusted Recapitulation of Motor Vehicle Usage Tax - Weekly Report", June[,] 1991;

7. Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report", June[,] 1991;

8. Revenue Form 71F004, "Motor Vehicle Usage Tax - Loaner-Rental Program", March[,] 2006;

9. Revenue Form 72A007, "Affidavit of **Nonhighway**[~~Nonhighway~~] Use", July 2007; [~~June, 2005;~~]

10. Revenue Form 73A054, "Kentucky Application for Dealer Loaner/Rental Vehicle Tax", August[,] 2006;

11. Revenue Form 73A055, "Monthly Report for Dealer Loaner/Rental Vehicle Tax", January[,] 2005; **and**

12. Revenue Form 73A070, "Motor Vehicle Usage Tax Request for Extension of Deposit/ACH Call-In", November[,] 2005;

(k) Racing taxes - referenced material:[~~:~~] Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", December[,] 2006;

(l) Transient room tax - referenced material:[~~:~~] Revenue Form 73A850, "Transient Room Tax Monthly Return", April 2005;

(m) Utility gross receipts license tax - referenced material:

1. Revenue Form 73A900, "Utility Gross Receipts License Tax Application", July[,] 2005;

2. Revenue Form 73A901, "Utility Gross Receipts License Tax Return", August[,] 2005;

3. Revenue Form 73A901(I), "Instructions for Utility Gross Receipts License Tax Return", January[,] 2006;

4. Revenue Form 73A902, "Utility Gross Receipts License Tax (UGRLT) Energy Exemption Annual Return", September[,] 2006;

5. Revenue Form 73A902-V, "Kentucky Utility Gross Receipts License Tax Payment Voucher",[,]August[,] 2005; and

6. Revenue Form 73F010, "Utility Gross Receipts License Tax", March[,] 2005; and

(n) [~~(m)~~] Waste tire tax - referenced material:[~~1.~~] Revenue Form 73A051, "Motor Vehicle Tire Fee Report", March[,] 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street[~~200 Fair Oaks Lane~~], Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

WILLIAM M. COX, SR., Commissioner

APPROVED BY AGENCY: May 21, 2008

FILED WITH LRC: May 22, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on July 23, 2008, at 10 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, September 9, 2008)

103 KAR 30:091. Sales to farmers.

RELATES TO: KRS 139.260, 139.470, 139.480

STATUTORY AUTHORITY: [~~KRS Chapter 13A,~~] 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS **139.010**, 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. **KRS 139.480 exempts specified property from sales and use taxes. This administrative regulation establishes the sales and use tax requirements for sales to farmers.**[~~The administrative regulation is necessary to interpret the sales and use tax law as it relates to sales to farmers.~~]

Section 1. Definitions (1) "Attachments" means tangible personal property **that:**

(a) Is necessary for the operation of farm machinery and is purchased primarily to improve efficiency to diversify the function which the machinery is capable of performing; and

(b) Includes replacement attachments, or repair or replacement parts for the attachments.[~~necessary for the operation of farm machinery or implements that are purchased primarily to improve efficiency or to diversify the function which the machinery or implements are capable of performing. Attachments shall include replacement attachments and repair and replacement parts.~~]

(2) "Crops" means plants, trees, or shrubs grown for sale, including corn, hay, tobacco, soybeans, wheat, straw, fruit, vegetables, timber, and flowers.

(3) "Farmer" means any person that is regularly engaged in the occupation of:

(a) Tilling and cultivating the soil for the production of crops as a business;

(b) Raising livestock or poultry, if the livestock or poultry, or the products of the livestock or poultry, are for sale;

(c) Producing milk for sale; or

(d) Breeding or producing:

1. Ratites;

2. Llamas or alpacas;

3. Buffalos;

4. Aquatic organisms; or

5. Cervids.

(4) "Farm machinery" is defined by KRS 139.480(11).

(5) "Livestock" means animals of a kind the products of which ordinarily constitute food for human consumption.

(6) "On-farm facility" means property used in the pursuits provided under KRS 139.480 as follows:

(a) Fencing or structures permanently affixed to or installed on the premises of the property;

(b) Improvements to real property such as ponds;

(c) Any materials incorporated into the construction, renovation, or repair of the fencing, structures or improvements described in paragraph (a) or (b); and

(d) Any equipment, machinery, or attachments including

repair or replacement parts for the equipment, machinery, or attachments used in the operation of the facility.

(7) "Person" is defined by KRS 139.010(10).[~~"On-farm facility" means land, ponds, streams, fencing and structures within the premises of property used in the pursuits provided under KRS 139.480 for:~~

~~(a) Storing, drying, processing, and handling grain and soybean;~~

~~(b) Raising poultry or livestock;~~

~~(c) Breeding and producing ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products;~~

~~(d) Breeding and producing llama and alpaca hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products;~~

~~(e) Breeding and producing buffalo hides, breeding stock, meat, and buffalo by-products;~~

~~(f) Raising aquatic organisms by a person regularly engaged in the business of producing products of aquaculture, as defined in KRS 260.960, for sale; and~~

~~(g) Breeding and producing cervid hides, breeding stock, meat, and cervid by-products.~~

~~(3) "Production of crops" means the occupation of tilling the soil as a business to produce hay, tobacco, soybeans, fruit, vegetables, timber, flowers, shrubs, etc. for sale.~~]

Section 2. **The examples of taxable and nontaxable items contained in this administrative regulation shall be used for illustrative purposes only and are not intended to be all inclusive.**

Section 3. Farm Machinery. In addition to the more commonly recognized items that are classified as "farm machinery", the list provided in this section shall serve as examples of the items that shall[~~Exempt "farm machinery" shall include motor or animal-drawn or operated farm machinery or implements. The following list contains examples of items which may~~] qualify for exemption if used exclusively and directly for farming as provided in KRS 139.480(11)[~~, in addition to the more commonly known items of "farm machinery"~~]:

(1) All terrain vehicles **(ATV) or utility vehicles**[~~—utility (ATVs)~~];

(2) Automatic **or**[~~and~~] portable feeding equipment **including:**[~~;~~]

(a) Livestock creep feeders; **and**

(b) Poultry feeders;[~~and~~

~~(c) Round bale feeders.~~]

(3) Automatic egg gathering systems;

(4) Automatic washers;

(5) Automatic waterers;

(6) Brooders;

(7) Bulk tanks (mechanical);

(8) Bush hogs;

(9) Chain saws;

(10) Cleaning machinery (mechanical);

(11) Clippers for livestock;

(12) Coke stoves for curing tobacco;

(13) Cooling units **or**[~~and~~] cooling fans;

(14) Egg processing machinery;

(15) Farm wagons;

(16) Grain **or**[~~and~~] hay elevators;

(17) Hay mowers;

(18) Heaters (portable);

(19) Incubators;

(20) Insecticide sprayers (hand-held);

(21) Irrigation systems;

(22) Log splitters;

(23) Milking machines;

(24) Posthole diggers (mechanical);

(25) Roller mills;

(26) Seed sowers (automatic);

(27) Shop welders **or**[~~and~~] other machinery (mechanical) **used exclusively**[~~exclusively for use~~] to maintain other farm machinery;

(28) Silo unloaders (augers);

(29) Tilt table for livestock;

(30) Tobacco curing machinery;

(31) Tobacco setter;

(32) Tobacco transplant system machinery, **including:**

(a) Clipping equipment;

(b) Heating equipment;

(c) Injector systems;

(d) Seeding equipment; and

(e) Ventilation equipment; or[~~; and~~

~~(a) Clipping;~~

~~(b) Heating;~~

~~(c) Injector systems;~~

~~(d) Seeding; and~~

~~(e) Ventilation.~~]

(33) Tractor mounted sprayer.

Section **4. Exempt Chemicals. In addition to more commonly recognized items that are classified as "farm chemicals", the list provided in this section shall serve as examples of items that shall**[~~3. Exempt Chemicals. This category of exempt items refers to chemicals used in the production of crops as a business to improve quality and quantity of plant growth or for use in raising of livestock, poultry, ratite birds, llamas, alpacas, buffalos, aquatic organisms, and cervids that function as an insecticide, fungicide, herbicide, or rodenticide. The following list contains examples of items that may~~] qualify for the farm chemical exemption as provided in KRS 139.480(8)[~~in addition to the more commonly known items of farm chemicals~~]:

(1) Adjuvant to enhance herbicide coverage of crops;

(2) Antiseptic wipes to clean cows' udders;

(3) Insecticidal dipping chemicals;

(4) Insecticidal ear tags;

(5) Lime **or**[~~and~~] hydrated lime for disinfectant;

(6) Methyl bromide gas **or**[~~and~~] similar tobacco chemicals; **or**[~~and~~]

(7) Seed flow enhancers to optimize seed planting and spacing, including talc **or**[~~and~~] graphite.

Section **5.**[~~4.~~] Exempt Feed. The **list provided in this section shall serve as examples of items that shall**[~~following list contains examples of items that may~~] qualify for the feed **and feed additive** exemptions as provided in KRS 139.480:

(1) Bag **or**[~~and~~] block salt;

(2) Dietary supplements as a feed additive;

(3) **Fish pellets, grain, corn gluten, peanut hulls, soybean hulls, or distiller's grain;**[~~Feed for:~~

~~(a) Alpaca;~~

~~(b) Aquatic organisms;~~

~~(c) Beef cattle;~~

~~(d) Buffalo;~~

~~(e) Cervid;~~

~~(f) Dairy cattle;~~

~~(g) Feeder animals;~~

~~(h) Goats;~~

~~(i) Hogs;~~

~~(j) Llamas;~~

~~(k) Poultry;~~

~~(l) Ratite birds; and~~

~~(m) Sheep.~~]

(4) Milk replacer;

(5) Mineral blocks;

(6) Protein blocks;

(7) Protein supplements; **or**[~~and~~]

(8) Special medicated feed **pre-mixes**[~~mixes except separate medicine purchases~~].

Section **6.**[~~5. Exempt~~] On-farm Facilities. The list **provided in this section**[~~in this subsection~~] shall serve as **examples of items the sale or purchase of which shall**[~~an example of items that may~~] qualify for the exemption provided for all on-farm facilities under KRS 139.480:

(1) Branding iron heaters **or**[~~and~~] irons;

(2) Bucket racks;

(3) Building materials, **including:**[~~;~~]

(a) Concrete;

(b) Gravel;

(c) Guttering;
(d) Insulation;
(e) Lumber;
(f) Nails;
(g) Paint;
(h) Rock;
(i) Roofing materials; **or**[~~and~~]
(j) Sand;
(4) Culvert pipe;
(5) Drainage tile;
(6) Erosion mats;
(7) Farm gates;
(8) Feeding system materials or equipment, including:
(a) Feed buckets;
(b) Feed bunks for farm wagons;
(c) Hoses;
(d) Nozzles;
(e) Pipelines;
(f) Round bale feeders;
(g) Salt or mineral feeders; or
(h) Tubes;
(9) Fencing materials, including:
(a) Cattle guards;
(b) Fence chargers;
(c) Insulators or other components used in an electrical fence system;
(d) Planks;
(e) Posts;
(f) Staples; or
(g) Wire;
(10) Handling facilities, including:
(a) Corral panels, chutes, or sweeps;
(b) Farrowing crates;
(c) Headgates; or
(d) Holding crates or hutches;
(11) Insect control (electric);
(12) Livestock oilers;
(13) Manure pit for livestock;
(14) Pond sealers;
(15) Silos, silo covers, or silage covers;
(16) Water hydrants or water tanks; or
(17) Water pipe including plastic or other material.[~~.~~
~~(4) Calf crates;~~
~~(5) Calf hutches;~~
~~(6) Corrals (portable);~~
~~(7) Culvert pipe;~~
~~(8) Drainage tile;~~
~~(9) Erosion mats;~~
~~(10) Farm gates;~~
~~(11) Farrowing crates;~~
~~(12) Feeding system materials and equipment:~~
~~(a) Feed buckets;~~
~~(b) Feed bunks for farm wagons;~~
~~(c) Hoses;~~
~~(d) Nozzles;~~
~~(e) Pipelines; and~~
~~(f) Tubes.~~
~~(13) Fence chargers (electric);~~
~~(14) Fencing materials:~~
~~(a) Insulators and other components used in an electrical fence system;~~
~~(b) Planks;~~
~~(c) Posts;~~
~~(d) Staples; and~~
~~(e) Wire.~~
~~(15) Hog holding crates;~~
~~(16) Insect control (electric);~~
~~(17) Livestock chutes;~~
~~(18) Livestock headgates;~~
~~(19) Livestock oilers;~~
~~(20) Manure pit for livestock;~~
~~(21) Pond sealers;~~
~~(22) Salt and mineral feeders;~~
~~(23) Silage covers;~~
~~(24) Silos;~~
~~(25) Silo covers;~~
~~(26) Water hydrants; and~~
~~(27) Water pipe including plastic and other material.~~]

Section **7.**[~~6.~~] Packaging Materials. The **list provided in this section shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax**[~~following list contains examples of items exempt~~] if used in the packaging of products for sale, in addition to the exemption provided for twine and wire used for baling hay and straw in KRS 139.480(27):
(1) Bags or sacks;
(2) Baskets;
(3) Crates;
(4) **Shrink wrap; or**
(5) Net wrap[~~Twine; and~~
~~(5) Wire.~~]

Section **8.**[~~7.~~] Farm Work Stock. The **list provided in this section shall serve as examples of farm work stock the sale or purchase of which shall be exempt from sales and use tax**[~~following list contains examples of items of farm work stock which may qualify for exemption~~] as provided in KRS 139.480(6):
(1) Donkeys **or burros**;
(2) Draft horses;
(3) Guard dogs, including the Pyrenees **or**[~~and~~] Polish Tatra breeds, to protect sheep, goats, **or**[~~and~~] other livestock;
(4) Herd dogs for herding sheep, cattle, or other livestock;
(5) Jacks; **or**[~~and~~]
(6) Mules.

Section **9. Attachments,**[~~8. Exempt Attachments;~~] Repair and Replacement Parts. (1) Attachments **sold or** purchased for use on farm machinery which are necessary to the operation of the **farm** machinery **shall be**[~~or implements are~~] exempt from **sales and use tax. The list provided in this subsection shall serve as examples of items of sale or purchase of which shall be exempt from sales and use tax:**[~~tax. Examples that may be included in the exempt attachment category are as follows:~~]
(a) Dual wheel assemblies;
(b) Hitches;
(c) Hydraulic systems;
(d) Water tanks; **or**[~~and~~]
(e) Weights.
(2) Repair and replacement parts **sold or** purchased for use on farm machinery which are necessary to the operation of the machinery **shall be**[~~are~~] exempt from **sales and use tax. The list provided in this subsection shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax:**[~~tax. Examples that may be included in the repair and replacement parts category are:~~]
(a) Batteries;
(b) Bolts;
(c) Chain saw repair parts;
(d) Cutting parts;
(e) Fan belts;
(f) Farm machinery filters;
(g) Miscellaneous motor repair part;
(h) Mufflers;
(i) Plow points;
(j) Spark plugs;
(k) Springs;
(l) Tires; or
(m) V-belts.[~~Miscellaneous motor repairs;~~
~~(g) Mufflers;~~
~~(h) Plow points;~~
~~(i) Spark plugs;~~
~~(j) Springs;~~
~~(k) Tires; and~~
~~(l) V-belts.~~]

Section **10. Taxable Items. The list provided in this section shall serve as examples of items commonly used on farms, the sale or purchase of which shall not be exempt from the**

sales or use tax as provided by KRS 139.480:

(1) Hand tools or wholly hand-operated equipment, including:

(a) Axes;
(b) Barn brooms;
(c) Barn forks;
(d) Brooms;
(e) Drench guns;
(f) Grease guns;
(g) Hoes;
(h) Jacks (manual or electronic);
(i) Ladders;
(j) Pitchforks;
(j) Pliers;
(k) Post hole diggers (manual);
(l) Rakes;
(m) Shovels;
(n) Tobacco balers (hand operated);
(o) Wheelbarrows; or
(p) Wrenches;

(2) Accessories not essential to the operation of the farm machinery except if sold as a part of an assembled unit, including:

(a) Air conditioning units;
(b) Cabs;
(c) Canopies;
(d) Cigarette lighters;
(e) Deluxe seats;
(f) Lubricators;
(g) Radios;
(h) Seat cushions or covers; or
(i) Tool or utility boxes;

(3) Miscellaneous equipment, materials, or supplies, including:

(a) Antifreeze, oil, grease, lubricant, hydraulic fluid, or transmission fluid;
(b) Bedding materials including:
1. Chicken bedding;
2. Chicken litter;
3. Straw;
4. Sawdust; or
5. Wood shavings;
(c) Bird seed;
(d) Bromo gas applicators;
(e) Bumper hitch trailers;
(f) Calcium chloride;
(g) Castrators or elastrator bands or rings;
(h)Chains;
(i) Charcoal for cistern filtration;
(j) Chicken transport cages;
(k) Coke for curing tobacco;
(l) Copper sulphate;
(m) Dehorners;
(n) Dog food;
(o) Feed for work stock animals;
(p) Identification tags;
(q) Lawn or garden equipment, including:
1. Push mowers;
2. Riding lawn mowers;
3. Rotor tillers;
4. Weed eaters; or
5. Zero turn mowers;
(r) Livestock oil unless containing insecticide;
(s) Milk cans, milk strainers, or milk storage tanks;
(t) Rope;
(u) Snaps or washers;
(v) Tobacco canvas or other plant bed covers;
(w) Tobacco knives, tobacco spears, or tobacco sticks;
(x) Tobacco transplant system materials, including:
1. Plastic;
2. Trays; or
3. Ventilation curtains.
(y) Tractor paint;
(z) Truck batteries and truck tires; or
(aa) Work shoes or boots, work clothes, or safety goggles;

(4) Items sold or purchased for use in raising, feeding, showing, exhibiting, or breeding of horses except water as provided in KRS 139.470(14);

(5) Medicines, vaccines, vitamins, or wormers; or

(6) Veterinary instruments, including:

(a) Needles;
(b) Operating tables; or
(c) Syringes.[~~9. Taxable Items. The following categories of items are not excluded from sales and use tax as provided by KRS 139.480 and are subject to tax:~~

~~(1) Nonmechanical containers and nonmechanical storage facilities:~~
~~(a) Egg baskets;~~
~~(b) Feeders;~~
~~(c) Milk cans;~~
~~(d) Milk storage tanks;~~
~~(e) Oil and gas storage tanks;~~
~~(f) Wash tanks; and~~
~~(g) Watering tanks.~~
~~(2) Hand tools, and wholly hand-operated equipment:~~
~~(a) Axes;~~
~~(b) Barn brooms;~~
~~(c) Barn forks;~~
~~(d) Brooms;~~
~~(e) Grease guns;~~
~~(f) Hoes;~~
~~(g) Jacks;~~
~~(h) Ladders;~~
~~(i) Pitchforks;~~
~~(j) Pliers;~~
~~(k) Post hole diggers (manual);~~
~~(l) Rakes;~~
~~(m) Shovels;~~
~~(n) Tobacco balers (hand operated);~~
~~(o) Wheelbarrows; and~~
~~(p) Wrenches.~~
~~(3) Accessories not essential to the operation of the farm machinery itself except if sold as a part of an assembled unit:~~
~~(a) Air conditioning units;~~
~~(b) Cabs;~~
~~(c) Canopies;~~
~~(d) Cigarette lighters;~~
~~(e) Deluxe seats;~~
~~(f) Lubricators;~~
~~(g) Radios;~~
~~(h) Seat cushions or covers; and~~
~~(i) Tool or utility boxes.~~
~~(4) Miscellaneous equipment, materials, and supplies:~~
~~(a) Antifreeze;~~
~~(b) Bird seed;~~
~~(c) Bromo gas applicators;~~
~~(d) Bumper hitch trailers;~~
~~(e) Calcium chloride;~~
~~(f) Chains;~~
~~(g) Charcoal for cistern filtration;~~
~~(h) Chicken bedding;~~
~~(i) Chicken litter;~~
~~(j) Chicken transport cages;~~
~~(k) Coke for curing tobacco;~~
~~(l) Dog food;~~
~~(m) Feed for work stock animals;~~
~~(n) Greases;~~
~~(o) Hydraulic fluid;~~
~~(p) Identification tags;~~
~~(q) Lawn and garden equipment:~~
~~1. Push mowers;~~
~~2. Riding lawn mowers;~~
~~3. Rotor tillers;~~
~~4. Weedeaters; and~~
~~5. Zero turn mowers.~~
~~(r) Lubricants;~~
~~(s) Milk strainers;~~
~~(t) Netting wrap;~~

~~(u) Oils;~~
~~(v) Rope;~~
~~(w) Shrink wrap;~~
~~(x) Snaps and washers;~~
~~(y) Straw;~~
~~(z) Tobacco canvas and other plant bed covers;~~
~~(aa) Tobacco knives;~~
~~(bb) Tobacco spears;~~
~~(cc) Tobacco sticks;~~
~~(dd) Tobacco transplant system materials:~~
~~1. Plastic;~~
~~2. Trays; and~~
~~3. Ventilation curtains.~~
~~(ee) Tractor paint;~~
~~(ff) Transmission fluid;~~
~~(gg) Truck batteries;~~
~~(hh) Truck tires;~~
~~(ii) Wood shavings; and~~
~~(jj) Work shoes and boots.~~
~~(5) Items which are incorporated into real property, except some materials incorporated into the construction, renovation, or repair of on-farm facilities as provided in KRS 139.480:~~
~~(a) Building materials:~~
~~1. Concrete;~~
~~2. Gravel;~~
~~3. Guttering;~~
~~4. Insulation;~~
~~5. Lumber;~~
~~6. Nails;~~
~~7. Paint;~~
~~8. Rock;~~
~~9. Roofing materials; and~~
~~10. Sand.~~
~~(b) Fencing materials.~~
~~1. Insulators and other components used in an electrical fence system;~~
~~2. Planks;~~
~~3. Posts;~~
~~4. Staples; and~~
~~5. Wire.~~
~~(6) Items purchased for use in raising, feeding, or breeding of horses except water as provided in KRS 139.470(14);~~
~~(7) Items purchased for animal health care. The following list contains items that may serve as examples of taxable animal health care products:~~
~~(a) Castrators;~~
~~(b) Copper sulfate;~~
~~(c) Dehorners;~~
~~(d) Drench devices;~~
~~(e) Elastrator rings and bands;~~
~~(f) Livestock oil unless containing insecticide;~~
~~(g) Medicines to be administered as feed additive, for internal parasitic control, or otherwise;~~
~~(h) Veterinary instruments:~~
~~1. Needles;~~
~~2. Operating tables; and~~
~~3. Syringes.~~
~~(i)Vitamins; and~~
~~(j) Wormers.~~]

Section **11.**[~~10.~~] Exemption Certificates. (1) A farmer shall issue a **Form 51A158, Farm Exemption Certificate, or a Form 51A260, Streamlined Sales and Use Tax Agreement - Certificate of Exemption,**[~~Farm Exemption Certificate, Form 51A158 or Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form 51A260,~~] which are[is] incorporated by reference in 103 KAR 3:020, for the exempt purchase of tangible personal property other than tangible personal property **exempted under KRS 139.480**[~~for incorporation into the construction, repair or renovation of on-farm facilities covered under KRS 139.480~~].

(2)**(a)** A farmer shall issue an On-farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, Form 51A159, which is incorporated by reference in 103 KAR 3:020, for the exempt purchase of tangible personal property for incorporation into the construction, repair or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(b) A farmer shall issue a separate, individual certificate for new construction, repairs, or renovations. Unless the certificate has an expiration date when submitted jointly with a contractor, the certificate shall remain effective for each project type (new construction, repairs, or renovations) until the purchaser notifies the seller in writing that it is no longer valid.

(3)**(a)** A contractor may jointly execute an On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a farmer for building materials, machinery, and equipment that are for incorporation into the construction, repair or renovation of an on-farm facility.

(b) A contractor shall not use the certificate for the purchase **rental, or lease**[~~or rental/lease~~] of construction equipment, consumable supplies or other tangible personal property that is not for incorporation into the on-farm facility.

(c) A jointly executed On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a contractor shall be acceptable only for purchases made for periods within the effective dates indicated on the certificate at the time of purchase. **(d)** A contractor shall jointly execute a new certificate with a farmer for additional purchases of materials, machinery, **or**[~~and~~] equipment required for the same project after the initial expiration date or for additional projects.

Section **12.**[~~11.~~] Service Providers. (1) Persons engaged in spraying fertilizer, hauling agricultural lime, or providing other services to persons regularly engaged in farming shall not qualify for the farm machinery exemption.

(2) The service provider shall not execute an exemption certificate on behalf of the farmer for the purchase of fertilizer, agricultural lime or other tangible personal property used to perform the service.

[~~Section 12.~~][~~Farm Machinery. The farm machinery exemption provided at KRS 139.480(10) applies to motor or animal-drawn or operated farm machinery and implements, including attachments which are necessary to the operation of such machinery and implements. To qualify for exemption, the property must be used in the occupation of tilling the soil for the production of crops (including timber, flowers, fruits, shrubs, etc.) as a business or in the occupation of raising and feeding livestock or poultry or of producing milk, eggs, wool, etc., for sale. The exclusion is not limited to items commonly referred to as "farm machinery" but includes all machinery directly used in the activities listed above.~~

~~Section 2. Exempt Items. Examples of items which qualify for exemption in addition to the more commonly known items of "farm machinery" are irrigation systems, tobacco curing equipment, farm wagons, portable insecticide sprayers, chain saws, mechanical cleaning equipment, mechanical shop equipment, mechanical posthole diggers, silo unloaders (augers), grain and hay elevators, milking machines, automatic washers, mechanical bulk tanks, cooling units, brooders, incubators, automatic egg gathering systems, egg processing equipment, automatic feeding equipment, automatic waterers.~~

~~Section 3. Taxable Items. The following categories of items are excluded from the meaning of the term "farm machinery" and are subject to tax:~~
~~(1) Containers and storage facilities such as milk cans, wash tanks, watering tanks, egg baskets, nonmechanical silos, nonmechanical feeders, and oil and gas storage tanks;~~
~~(2) Hand tools, and wholly hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, shovels, brooms, wrenches, pliers, and grease guns;~~
~~(3) Attachments (accessories) not essential to the operation of the machinery itself (except when sold as a part of an assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, tool or utility boxes, and lubricators.~~
~~(4) Miscellaneous farm equipment and supplies such as tobacco sticks, tobacco canvas, milk strainers, lawn and garden equipment, oils and greases, and coke;~~

~~(5) Items which are incorporated into real property such as stalls, stanchions, drainage tile, fencing materials, and building materials excepting materials incorporated into the construction, renovation, or repair of:~~

~~(a) On-farm grain or soybean facilities;~~

~~(b) On-farm chicken raising facilities.~~

~~Section 4. Attachments; Repair and Replacement Parts. (1) "Attachments" to farm machinery or farm implements are tax exempt both upon original purchase and when replaced. The term "attachments" refers to items purchased for use in connection with farm machinery or farm implements primarily to improve efficiency or to diversify the function which the machinery or implements are capable of performing. Included in the "attachment" category are: hydraulic systems, weights, hitches, dual wheel assemblies, other items necessary to the operation of machinery or implements.~~

~~(2) "Repair and replacement parts" purchased for use on farm machinery which are necessary to the operation of such machinery are exempt from tax. Included in the "repair and replacement part" category are: batteries, tires, fan belts, mufflers, spark plugs, miscellaneous motor repairs, plow points, cutting parts, v-belts, bolts, springs, etc.~~

~~Section 5. Exemption Certificates. The sales and use tax law sets forth various types of tangible personal property which may be purchased tax exempt by persons engaged in farming. The exemptions may be found at KRS 139.470(2) and KRS 139.480(4), (5), (6), (7), (8), (10), (13), (14) and (15). The appropriate exemption certificates which a vendor must have on file executed by a farmer to substantiate the nontaxable status of such sales are:~~

~~(1) A properly executed Farm Machinery Exemption Certificate, Revenue Form 51A148 (3-88), for farm machinery and attachments;~~

~~(2) A properly executed Agricultural Certificate of Exemption, Revenue Form 51A106 (4-86), for seed, feed, fertilizer, repair and replacement parts for farm machinery, nonreturnable containers, gasoline, special fuels, liquefied petroleum gas and repair and replacement parts for machinery and equipment which are part of an on-farm grain or soybean facility;~~

~~(3) A properly executed Certificate of Exemption for On-Farm Grain or Soybean Facilities, Revenue Form 51A148-S1 (3-88), for machinery, equipment, attachments and any materials incorporated into the construction, renovation or repair of on-farm grain or soybean facilities; and~~

~~(4) A properly executed Certificate of Exemption for On-Farm Chicken Raising Facilities, Revenue Form 51A153 (6-90), for equipment, machinery, attachments, repair and replacement parts and any materials incorporated into the construction, renovation or repair of on-farm facilities used exclusively for raising chickens.~~

~~Section 6. The exemption certificates specified in Section 5 of this administrative regulation are hereby incorporated by reference and may be obtained without charge from the Revenue Cabinet, Frankfort, Kentucky 40601. The certificates may be inspected and copied at the Frankfort office of the Revenue Cabinet located on the fourth floor of the Capitol Annex Building or the Taxpayer Service Centers listed below between the hours of 8 a.m. and 4:30 p.m. (local time).~~

~~Revenue Cabinet Taxpayer Service Centers~~

~~Ashland~~
~~P.O. Box 687~~
~~1422 Winchester Avenue~~
~~Ashland, Kentucky 41105-0687~~
~~(606) 329-9982~~
~~Bowling Green~~
~~P.O. Box 2040~~
~~1502 Westen Avenue~~
~~Bowling Green, Kentucky 42101~~
~~(502) 843-5470~~
~~Corbin~~
~~1707 Eighteenth Street~~
~~Falls Road Plaza, Suite 5~~
~~Corbin, Kentucky 40701~~
~~(606) 528-3322~~
~~Hazard~~
~~233 Birch Street~~
~~P.O. Box 419~~
~~Hazard, Kentucky 40701~~
~~(606) 439-2388~~
~~Hopkinsville~~
~~Hammond Plaza, P.O. Box 695~~
~~Hopkinsville, Kentucky 42240~~
~~(502) 887-2521~~
~~Lexington~~
~~301 East Main Street~~
~~Suite 500~~
~~Lexington, Kentucky 40507~~
~~(606) 233-3837~~
~~Louisville~~
~~620 South Third Street, Suite 102~~
~~Louisville, Kentucky 40202-2402~~
~~(502) 588-4512~~
~~Northern Kentucky~~
~~Kentucky Executive Building~~
~~Room 210~~
~~2055 Dixie Highway~~
~~Fort Mitchell, Kentucky 41011~~
~~(606) 292-6603~~
~~Owensboro~~
~~311 West Second Street~~
~~P.O. Box 628~~
~~Owensboro, Kentucky 42301~~
~~(502) 686-3301~~
~~Paducah~~
~~555 Jefferson Street~~
~~P.O. Box 2336~~
~~Paducah, Kentucky 42002-2336~~
~~(502) 444-8148~~
~~Pikeville~~
~~1279 North Mayo Trail~~
~~Pikeville, Kentucky 41501~~
~~(606) 437-4075~~

~~Section 7.~~[~~The examples of taxable and nontaxable items contained in this administrative regulation are for illustrative purposes only and are not intended to be all inclusive.~~]

Section 13. (1) This administrative regulation shall replace Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, [and] 51P135 **and 51P360.**

(2) Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, [and]51P135 **and 51P360** are hereby rescinded and shall be null, void, and unenforceable.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 4 p.m.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, September 9, 2008)

103 KAR 31:200. Energy efficiency Projects[~~products~~].

RELATES TO: KRS **139.010**[~~139.170, KRS~~] 139.518

STATUTORY AUTHORITY: KRS 131.130(1), KRS 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.170 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of taxes **KRS 139.518 establishes the sales and use tax refund**

provisions for energy efficiency products used at manufacturing plants. This administrative regulation establishes requirements for a sales and use tax refund relating to **an energy efficiency project**[~~purchases of new or replacement machinery or equipment that reduces the consumption of energy or energy-producing fuels in the manufacturing process at a plant facility in this state by at least fifteen (15) percent~~].

Section 1. Definitions. (1) "Energy efficiency project" is defined by KRS 139.518(1).

(2) "Manufacturing" is defined by KRS **139.010(8)**[~~139.170(2)~~].

(3) "Plant facility" is defined by KRS **139.010(11)**[~~139.170(3)~~].

[~~(4) "Processing production" is defined by KRS 139.170(1)(c)4.~~]

Section 2. Efficiency Requirements. To calculate the fifteen (15) percent reduction of energy or energy-producing fuels, the decrease in energy consumption shall be based on the total energy consumed within all combined manufacturing[~~and processing production processes~~] at one (1) plant facility.

Section 3. Refund Application Requirements. (1) The applicant shall file a completed Application for Preapproval for Energy Efficiency Machinery or Equipment, Form 51A300, with the Department of Revenue along with energy and energy producing fuel consumption documentation within the timeframe required under KRS 139.518(4).

(2) Requests for the sales and use tax incentive shall be filed **within the timeframe required by KRS 139.518(6)(a)**[~~within eighteen months from the date the machinery or equipment was placed into service~~]. The following completed documentation demonstrating achievement of the fifteen (15) percent energy efficiency threshold shall be submitted:

(a) Application for Energy Efficiency Machinery or Equipment[-] Sales and Use Tax Incentive, Form 51A351;

(b) Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive, Form 51A350. This agreement shall be completed and signed by the manufacturer, the vendor, and the contractor as applicable; and

(c) Purchase invoices for the machinery and equipment **for which a refund is being requested**[~~under consideration for refund~~].

(3) All applications and other documents required shall be postmarked, electronically submitted or, if delivered by messenger, hand-stamped by the department by the date required to qualify for consideration.

(4) The **applicant**[~~manufacturer~~] shall keep adequate and complete records supporting its refund request for periods not less than four (4) years as provided for in KRS 139.720. The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.518.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Preapproval for Energy Efficiency Machinery or Equipment", Form 51A300, June 2008;

(b) "Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive", Form 51A350, June 2008; and

(c) "Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive", Form 51A351, June 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 7, 2008

FILED WITH LRC: July 8, 2008 at 3 p.m.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

GENERAL GOVERNMENT CABINET
Kentucky Infrastructure Authority
(As Amended at ARRS, September 9, 2008)

200 KAR 17:090. Guidelines; Kentucky Infrastructure Authority Grants from Unobligated Bond Pool Funds.

RELATES TO: KRS [~~45.031,~~] 224A.011, 224A.035, 224A.040, 224A.050, **224A.050 -224A.314**[~~224A.306~~]

STATUTORY AUTHORITY: KRS **224A.040,** 224A.070(1), 224A.113**, 224A.300**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available**,** and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon. KRS **224A.300 requires the authority to promulgate administrative regulations requiring a government agency, as defined by KRS 224A.011(4), or a water association administering a water or wastewater system**[~~224A.300(4) requires the authority to promulgate administrative regulations requiring an entity receiving funding to provide specific operational information and updates of its system~~]. This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions. (1) "Applicant" means a governmental agency that has submitted an application to the authority for a loan or grant from authority funds.

(2) "Application" means an application submitted by an applicant for grant from the authority funds.

(3) "Conditional commitment letter" means a letter delivered to the applicant stating the authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(4) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031

(5) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system, including a standardized format for an annual budget, a chart of accounts with definitions, and a monthly operating report to system managers established by the authority, which **is**[~~shall be~~] used by a water or wastewater system seeking or using funds of the authority if an alternative accounting system has not been approved by the authority.

(6) "Project" means an infrastructure project related to drinking water or wastewater.

Section 2. Eligible Projects. (1) Funds available to the authority shall be used to fund projects.

(2) Only projects addressing one (1) or more of the following conditions shall be eligible for funding:

(a) **The** proposed project to be funded shall be water or sewer related;

(b) **The proposed project shall address the provisions of KRS 224A.300-224.314**[~~Projects address provisions of SB 409~~];

(c) The proposed project **shall**[~~will~~] address an emergency situation;

(d) **The** proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community;

(e) **The** proposed project shall promote economic development;

(f) Funds for economic development projects shall not be used for creation of industrial sites without committed occupants;

(g) Funds **are** needed to complete funding package;

(h) Funds **are** needed to cover cost overrun for funding package;

(i) All proposed projects shall be subject to availability of funds; and

(j) Project applications meeting the[~~above~~] guidelines **estab-**

lished in paragraphs (a) through (i) of this subsection shall be funded in the order received.

(3) Grants shall be limited to **not more than** $500,000 per project.

Section 3. Applications. Each applicant shall submit one (1) original application to the authority at the address specified in the application.

(2)**(a)** An application shall be submitted on **Form KIA-08-01, Unobligated Bond Pool Fund Uniform Grant Application,**[~~forms prescribed by the authority and~~] posted on the following Web site: http://wris.state.ky.us/kia/.

(b) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Unobligated Bond Pool.

Section 4. Project Priority. Eligible projects shall be funded in the order received subject to the availability of funds.

Section 5. Additional Conditions to Project Funding. (1) A water supply and distribution system seeking funding for a project shall:

(a) Submit with the application current information regarding the financial, managerial, and technical aspects of its system;

(b) Update the information provided pursuant to paragraph (a) of this subsection, at least once each year; and

(c) Agree, in writing, to adopt and utilize the Kentucky Uniform System of Accounting and to charge rates for services based on the actual cost of that service.

(2) Before funds shall be disbursed to an applicant whose project has been approved for funding, the applicant shall demonstrate to the authority that the project:

(a) Has been reviewed through the Kentucky State Clearinghouse process; and

(b) Is in compliance with **applicable**[~~other~~] state and federal requirements.

Section 6. Terms of Financial Assistance. (1) An application for funding shall be:

(a) Subject to financial viability review by authority staff; and

(b) Referred to the board of directors of the authority for final action.

(2) A project **shall be funded if**[~~may be funded as~~] approved by the board of directors of the authority **and the Capital Projects and Bond Oversight Committee**.

(3) Upon approval of an application for funding of a project, the authority shall issue a conditional commitment letter to the applicant establishing the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

(a) Accounting standards or financial reporting conditions;

(b) Rate covenants;

(c) Other federal or state legal requirements relating to the project or the applicant;

(d) Engineering or technical requirements; **and**

(e) Receipt of additional funding commitments from other sources.[~~; or~~]

(4) Financial assistance by the authority shall be made available only upon:

(a) Execution of an assistance agreement; and

(b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.

(5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved by the board of directors without the need for further action by the board if:

(a) Requested by an applicant; and

(b) The staff of the authority finds that:

1. The additional requested amount is needed for the project; and

2. Adequate funds are available up to $500,000 total per grant.

(6) The Authority shall monitor the assistance agreements and require that financial reports be made available to the authority by the governmental agency[~~at such intervals as necessary~~].

(7) The Authority shall monitor the cash flows of the project[~~,~~] and perform all actions that shall be required to assure that the agreements continuously meet the program **standards**[~~standard~~] established by this administrative regulation.

(8)**(a)** The authority shall collect an annual administrative fee of one-half(1/2) of one (1) percent charged on the principal grant amount.

(b) This fee shall be applied to the **administrative processing** servicing costs of the grants and necessary operating expenses of the program.

Section 7. Incorporation by Reference. (1) "Form KIA-08-01 Unobligated Bond Pool Fund Uniform Grant Application", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Infrastructure Authority, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40602, (502) 573-0260, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Kentucky Infrastructure Authority Board of Directors has reviewed and approved this administrative regulation, prior to its filing by the Kentucky Infrastructure Authority, Office of the Governor, with the Legislative Research Commission as required by KRS 224A.113.

TONY WILDER, Commissioner, Chair
JOHN E. COVINGTON, III, Executive Director
APPROVED BY AGENCY: July 15, 2008
FILED WITH LRC: July 15, 2008 at 9 a.m.
CONTACT PERSON: Mr. John D. Herald, Executive Assistant, Kentucky Infrastructure Authority, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, phone (502) 573-0260, fax (502) 573-0157.

GENERAL GOVERNMENT CABINET
Board of Veterinary Examiners
(As Amended ARRS, September 9, 2008)

201 KAR 16:110. Prescription and dispensation of drugs for animal use.

RELATES TO: KRS 321.181(5)(b)
STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.181(5)(b) provides that the practice of veterinary medicine includes the prescribing, administering, or dispensing of drugs and medications for veterinary purposes. KRS 321.235(3) and 321.240(5) **authorize**[~~authorizes~~] the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 321. This administrative regulation establishes a procedure for the prescription and dispensation of drugs by licensed veterinarians for use in animals and livestock.

Section 1. Definitions. (1)[~~"Prescription" means an order from a veterinarian to a pharmacist or another veterinarian authorizing the dispensing of a veterinary prescription drug to a client for use on or in a patient~~

~~(2)~~]"Legend drug" means veterinary prescription drug.

(2) "Prescription" means an order from a veterinarian to a pharmacist or another veterinarian authorizing the dispensing of a veterinary prescription drug to a client for use on or in a patient;

(3) "Veterinary drug" means:

(a) A drug for animal use recognized in the official United States Pharmacopoeia or National Formulary of the United States;

(b) A drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals;

(c) A drug, other than feed, medicated feed, or a growth promoting implant intended to affect the structure or function of the body of an animal; or

(d) A drug intended for use as a component of a drug in para-

graph (a), (b), or (c).

(4)[~~(3)~~] "Veterinary prescription drug" means:

(a) A drug that is not safe for animal use without a veterinarian using or ordering the use of the product, and that is required by federal law to bear the following statement: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian";

(b) A drug that is required by state law to be dispensed only on order or prescription of a licensed veterinarian;

(c) The extra-label use of an over-the-counter animal drug or human drugs; and

(d) A medicament compounded by mixing two (2) or more legally-obtained over-the-counter or prescription drugs.

Section 2. Prescribing and Dispensing. (1) A veterinary prescription shall include all of the following:

(a) The name and address of the veterinarian and, if the prescription is a written order, the signature of the veterinarian;

(b) The name and address of the client;

(c) The species and identity of the patient for which the prescription is issued;

(d) The name, strength, and quantity of the drug prescribed;

(e) The date on which the prescription is issued;

(f) The directions for administering the drug;

(g) If the patient is a food producing animal, the withdrawal time for the veterinary drug;

(h) If the prescription authorizes extra-label use, the manner in which the client may use the drug;

(i) Any cautionary statements required by law; and

(j) Number of refills allowed.

(2) A veterinarian **shall**[~~may~~] not:

(a) Prescribe for or dispense to a client a veterinary prescription drug or a drug for extra-label use without personally examining the patient unless a veterinary-client-patient relationship exists between the prescribing veterinarian, client and patient, and the veterinarian determines that the client has sufficient knowledge to administer the drug properly;

(b) Prescribe or dispense a veterinary prescription drug to a client unless the veterinarian indicates in the appropriate records described **in**[~~under~~] Section 4 of this administrative regulation, within seventy-two (72) hours after the prescription is issued or the drug is dispensed, that the prescription has been issued or that the drug has been dispensed;

(c) Prescribe a drug to a client for extra-label use on a patient unless all of the following apply:

1. A veterinary-client-patient relationship exists between the veterinarian, client and patient and the veterinarian has made a careful medical diagnosis of the condition of the patient within the context of that veterinarian-client-patient relationship;

2. The veterinarian determines that there is no drug that is marketed specifically to treat the patient's diagnosed condition, or determines that all of the drugs that are marketed for that purpose are clinically ineffective;

3. The veterinarian recommends procedures for the client to follow to ensure that the identity of the patient **shall**[~~will~~] be maintained; and

4. If the patient is a food producing animal, the veterinarian prescribes a sufficient time period for drug withdrawal before the food from the patient may be marketed; or

(d) Transmit a prescription electronically unless the client approves the transmission and the prescription is transmitted to a pharmacist or veterinarian designated by the client.

Section 3. Labeling. (1) A veterinarian **shall**[~~may~~] not dispense a drug that has been prepared, mixed, formulated or packaged by the veterinarian unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(2) A veterinarian **shall**[~~may~~] not dispense a veterinary prescription drug that has been prepackaged by its manufacturer for dispensing unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(3) A veterinarian may dispense a veterinary over the counter drug without affixing any information to the container in which the drug is dispensed if a label that has been affixed to the container by its manufacturer provides adequate information for its use.

Section 4. Prescription Records. (1) A veterinarian shall maintain complete records of each veterinary prescription drug that the veterinarian receives, prescribes, dispenses or administers, and of each prescription issued by the veterinarian that authorizes extra-label use.

(2) Records of each veterinary prescription drug shall include the name of each veterinary prescription drug that is received, the name and address of the person from whom the drug is received and the date and quantity received, the name and address of the person to whom the drug is dispensed and the date and quantity dispensed and, if the veterinarian prescribes or administers the drug, the information specified in Section 2(1) of this administrative regulation.

(3) Records of each prescription authorizing extra-label use shall include the information specified in Section 2(1) of this administrative regulation.

(4) A veterinarian shall maintain records of each veterinary prescription drug for not less than five (5) years after the date on which the veterinarian prescribes, dispenses or administers the drug or extra-label use.

Section 5. (1) A veterinarian shall not be required to write a prescription for controlled substances or a prescription for any medication that, in the veterinarian's medical judgment, is not appropriate for the patient's medical care.

(2) A veterinarian may refuse to write a prescription if it is not directly requested by a client with whom there is, in the veterinarian's opinion, a current and existing veterinarian-patient-client relationship.

(3) A prescription **shall**[~~can~~] be construed to include any manner of authorization for filling a prescription, including verbal or electronic communication.

(4) The veterinarian may delegate to an office employee the authority to communicate a refill of a legend drug to the pharmacy on behalf of the veterinarian pursuant to written protocol established prior to the delegation of **that**[~~such~~] authority.

Section 6. (1) A veterinarian shall ensure that all federal legend drugs and veterinary prescription drugs are maintained, administered, prescribed, dispensed, and destroyed in compliance with all state and federal laws.

(2) A veterinarian shall not prescribe or dispense a quantity of drug that is greater than that the amount required for six (6) months of treatment for an animal, herd, or flock.

(3) To prescribe, sell, distribute, or dispense any drug requiring a prescription for use in the context of an animal, herd, or flock, a veterinarian shall first **do**[~~have performed~~] all of the following:

(a) **Perform**[~~Performed~~] an appropriate history and physical examination;

(b) **Make**[~~Made~~] a diagnosis based upon the history, physical examination, and pertinent diagnostic and laboratory tests;

(c) **Formulate**[~~Formulated~~] a therapeutic plan, and discussed it with the animal's **owner, agent,**[~~owner/agent~~] or guardian, along with the basis for it and the risks and benefits of various treatments options, a part of which might be a prescription drug; and

(d) **Ensure**[~~Insured~~] availability of the veterinarian or the veterinarian's staff for appropriate follow-up care.

Section 7. (1) A veterinarian may dispense a prescription drug only if the prescribing veterinarian has established a veterinarian-client-patient relationship.

(2) **If the dispensing veterinarian does not have a veterinarian-client-patient relationship, a veterinary assistant may assist in the delivery of a veterinary drug, legend drug, or veterinary prescription drug only under the direct supervision of the licensed veterinarian by who the assistant is employed.**[~~(a) A veterinary assistant may dispense a veterinary drug, a legend drug, or a veterinary prescription drug only under the~~

~~direct supervision of the veterinarian by which he is employed.~~

~~(b) If a veterinary drug, a legend drug, or a veterinary prescription drug is dispensed by a veterinary assistant, the veterinarian shall ensure that the requirements of this regulation are met.~~]

(3) **If the dispensing veterinarian does have a veterinarian-client-patient relationship, a veterinary assistant may assist in the delivery of a veterinary drug, legend drug, or veterinary prescription drug under the indirect supervision of the veterinarian by whom the assistant is employed.**

(4) If a veterinary assistant acts under the provisions of this section, it shall be the responsibility of the licensed veterinarian to ensure that the requirements of this administrative regulation are met.[~~A veterinary assistant employed by the prescribing veterinarian who has established a veterinary client patient relationship may dispense under the indirect supervision of the veterinarian by which he is employed.~~]

Section 8. Enforcement. (1) Except as provided in paragraph 2 of this section, if the board has reason to believe that a person is violating or has violated this administrative regulation, the examining board may:

(a) Inspect the premises on which the person possesses, prescribes, dispenses, labels or administers veterinary drugs;

(b) Inspect pertinent records, equipment, materials, containers or facilities that are relevant to determining whether the person is violating or has violated this **administrative regulation**[~~Section~~]; and

(c) Collect relevant samples of veterinary drugs **found on the premises**.

This is to certify that the Chair of the Kentucky Board of Veterinary Examiners has approved this administrative regulation prior to its filing by the Kentucky Board of Veterinary Examiners with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS Chapter 321.

PERRY W. WORNALL, D.V.M., Chair
ROBERT M. BURNSIDE, Secretary
APPROVED BY AGENCY: December 4, 2007
FILED WITH LRC: December 4, 2007 at 3 p.m.
CONTACT PERSON: Claude Wagner, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, September 9, 2008)

201 KAR 20:410. Expungement of records.

RELATES TO: KRS **314.131**[~~314.131(9)B~~]
STATUTORY AUTHORITY: KRS 314.131(1)**, (9)**
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 314.131(1) and (9) authorize the Board of Nursing to promulgate administrative regulations to establish which disciplinary records may be expunged. This administrative regulation establishes which records**[~~To set forth the records which~~] may be expunged and the procedure **for expungement**[~~to follow~~].

Section 1. **Definition. "Expungement" means**[~~Definitions. "Expungement" shall mean~~] that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred.

Section 2. A nurse whose record has been expunged may properly reply that disciplinary records do not exist upon inquiry.

Section 3.[~~The person may properly reply that no record exists with respect to such persons upon any inquiry in the matter.~~

~~Section 2.~~] Upon a request from a nurse against whom disciplinary action has been taken, the board shall expunge records relating to the following categories of disciplinary action:

(1) Consent decrees that are at least five (5)[~~seven (7)~~] years old; and

(2) Agreed orders and decisions **that**[~~which~~] are at least ten (10) years old and which concern one (1) or more of the following categories, provided that there has **not** been[~~no~~] subsequent disciplinary action:

(a) Failed to timely obtain continuing education or AIDS education hours;

(b) Paid fees [~~by a check~~] that were[~~was~~] returned unpaid by the bank; or

(c) Practiced as a nurse or advanced registered nurse practitioner without a current[~~, active~~] license, registration, provisional license, or temporary work permit.

(3) Agreed orders and decisions **that**[~~which~~] are at least ten (10) years old and which resulted in a reprimand, provided that there has **not** been [~~no~~] subsequent disciplinary action and all of the terms of the agreed order or decision have been met.

(4) Agreed orders and decisions **that**[~~which~~] are at least twenty (20) years old, provided that there **not** been[no] subsequent disciplinary action and all of the terms of the agreed order or decision have been met.

Section **4. The board shall not report cases that have been expunged to another state agency, other board of nursing, or**[~~3. The board shall not report cases which have been expunged to any other state agency, other board of nursing, or any~~] other organization.

JIMMY ISENBERG, President
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: July 8, 2008 at noon
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Social Work
(As Amended at ARRS, September 9, 2008)

201 KAR 23:015. Temporary permission to practice.

RELATES TO: KRS 335.080, 335.090, 335.100
STATUTORY AUTHORITY: KRS 335.070(1), (3), (9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1) authorizes the board to evaluate and approve the qualifications of applicants for licensure. KRS 335.070(3) authorizes the board to promulgate administrative regulations. KRS 335.070(9) authorizes the board to establish requirements for temporary permits to practice social work. This administrative regulation establishes the requirements for the granting of temporary permission to engage in the practice of social work.

Section 1. (1) A temporary permit to engage in the practice of social work **shall be granted, if requested,**[~~may be granted~~] to an applicant who has completed all of the requirements for licensure except the examination and has applied for licensure under the provisions of KRS 335.080, 335.090, or 335.100.

(2) A person practicing under a temporary permit as a certified social worker shall not[~~:~~

~~(a) Engage in the practice of clinical social work under the provisions of KRS 335.080(3) or 335.100(3);~~

~~(b)~~] Accumulate hours towards the supervision requirements of KRS 335.100(1)(b).

(3)[~~(a) The temporary permit shall allow the applicant to engage in the practice of~~][~~nonclinical~~][~~social work under the supervision of a person credentialed by the board at the same, or higher licensure level as that applied for by the applicant for the temporary permit.~~

~~(b)~~] Certified social workers and licensed clinical social workers practicing clinical social work under a temporary permit shall be under the supervision of a licensed clinical social worker, **or**

equivalent.

(4) The request for a temporary permit shall be accompanied by a letter from the proposed supervisor acknowledging the responsibility for supervision and for the practice of the person holding the temporary permit.

(5) **A licensee may not**[~~No licensee may~~] serve as the supervisor for more than two (2) persons holding a temporary permit at any one (1) time.

(6) Supervision during the period of temporary permission to practice shall be a minimum of one (1) hour of individual, face-to-face supervision per week.

(7) The temporary permit shall be valid until the applicant for licensure is issued or denied licensure under the provisions of KRS 335.080, 335.090, or 335.100, but[~~in no instance shall~~] the temporary permit **shall not** extend for more than **120 days** [~~sixty (60) days following the second examination offered~~] after the applicant has applied for licensure.

(8) [~~No~~]More than one (1) temporary permit shall **not** be granted for any applicant for licensure.

This is to certify that the Chair of the Kentucky Board of Social Work has approved this administrative regulation prior to its filing by the Kentucky Board of Social Work with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS Chapter 335.

MARGARET HAZLETTE, Chair

APPROVED BY AGENCY: January 28, 2008

FILED WITH LRC: April 4, 2008 at 10 a.m.

CONTACT PERSON: Gerald W. Hoppmann, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Social Work
(As Amended at ARRS, September 9, 2008)

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

RELATES TO: KRS **335.010,** 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3) **allows**[~~requires~~] a certified social worker **to**[~~may~~] engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) **requires**[~~provides that~~] an applicant for a licensed clinical social worker license to have acquired post-master's experience under appropriate supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) **requires**[~~provides that~~] a licensed clinical social worker **to**[~~shall~~] assume responsibility for and supervise the certified social worker's practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation establishes the educational institutions approved by the board, the definitions relating to supervision, the content of a **Contract for Clinical Social Work Supervision**[~~supervisory contract~~], and the requirements **for**[~~of~~] experience under supervision.

Section 1. Definitions. (1) "Educational institution approved by the board" means a graduate school of social work accredited by the Council on Social Work Education.

(2) "Practice of clinical social work" means the practice of social work **that**[~~which~~] focuses on the evaluation, diagnosis, and treatment of an **emotional**[~~emotion~~] disorder and mental illness as related to the total health of the individual and **that**[~~which~~] meets the requirements of Section 2 of this administrative regulation.

(3) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing clinical social work services.

(4) "Supervisor of record" means the supervisor who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3) and 335.100(3).

Section 2. Practice of Clinical Social Work. (1) The practice of clinical social work shall be based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics.

(2) A practitioner of clinical social work shall:

(a) Possess numerous skills, including skills necessary for:

1. Individual, marital, family, and group psychotherapy; and

2. Other treatment modalities;

(b) Establish a therapeutic relationship with his client **that**[~~which~~]:

1. Leads to correction of the dysfunction;

2. Includes:

a. Diagnosis using professionally recognized clinical nomenclature, treatment planning **that**[~~which~~] includes development, implementation, and modification of the plan;

b. Evaluation of progress; and

c. Termination of the treatment process; and

3. Is characterized by face-to-face contact with the client throughout the treatment process.

Section 3. Supervision. (1) A supervisor shall be a licensed clinical social worker who:

(a) Provides supervision to a certified social worker pursuant to KRS 335.080(3) and 335.100(3);

(b) Does not have:

1. An unresolved citation filed against him by the board;

2. A suspended or probated license; or

3. A previous or existing personal relationship with a supervisee; and

(c) Has:

1. Been in the practice of clinical social work for three (3) years following licensure as a licensed clinical social worker; and

2. By August 1, 2001, completed a board-approved three (3) hour training course on supervisory practices and methods for licensed clinical social workers.

(2) Supervisory experience obtained in Kentucky with a supervisor who has not completed the course required by **(1)(c)2 of this section**[~~this subsection~~] shall not be approved by the board.

(3)[~~(2)~~] A licensed clinical social worker shall not serve as a supervisor of record for more than six (6) certified social workers with whom he has a contract to be held accountable to the board at the same time.

(4)[~~(3)~~] An applicant receiving supervision outside of Kentucky shall demonstrate that his or her supervisor has been in the practice of clinical social work for a period of three (3) years following licensure as a clinical social worker or its equivalent effective at the time of the supervision.

Section 4. **Contract for Clinical Social Work Supervision. The Contract for Clinical Social Work Supervision**[~~Supervisory Contract. The supervisory contract~~] required by KRS 335.080(3) and 335.100(3) **shall contain**:

(1) The name and license number of the supervisee**;**[~~.~~]

(2) The name and license number of the supervisor of record**;**[~~.~~]

(3) The name and license number of other supervisors**;**[~~.~~]

(4) The agency, institution, or organization where the experience will be received**;**[~~.~~]

(5) A detailed description of the nature of the practice including the type of:

(a) Clients which shall be seen;

(b) Therapies and treatment modalities which shall be used including the prospective length of treatment; and

(c) Problems which shall be treated**;**[~~.~~]

(6) The nature, duration, and frequency of the supervision,

including the:

(a) Number of hours of supervision per week;

(b) Amount of group and individual supervision; and

(c) Methodology for transmission of case information;[.]

(7) The conditions or procedures for termination of the supervision;[.]

(8) A statement that:

(a) The supervisor of record understands that he shall be held accountable to the board for the care given to the supervisee's clients;

(b) The certified social worker is an employee of an agency, institution, or organization, and has Social Security and income tax deducted from his salary; and

(c) The supervisor of record and other supervisors meet the criteria established in Section 3(1),[and] (2), **and (3)** of this administrative regulation.

(9) An individualized job description **that**[which]:

(a) Describes in detail how the requirements of Sections 6 and 7 of this administrative regulation shall be met; and

(b) Is on office or agency letterhead and is signed by the executive director, the agency director, or the individual who heads the office.

Section 5. Notice to Client. If an employee is practicing under the supervision of a licensed clinical social worker, the employee shall notify in writing[to] each client during the period of the supervision. The notification shall contain:

(1) The name, office address, telephone number, and license number of the supervisor of record; and

(2) A statement that the employee is licensed by the board.

Section 6. Experience Under Supervision. Experience under supervision shall consist of:

(1) At least sixty (60) percent of the required experience in a direct client-professional relationship;

(2) Direct responsibility for a specific individual or group of clients; and

(3) Broad exposure and opportunity for skill development with a variety of dysfunctions, diagnoses, acuity levels, and population groups.

Section 7. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The accurate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of clinical social work; and

(e) The development and use of the professional self in the therapeutic process.

(2) Supervision shall total a minimum of 200 hours, which shall include individual supervision of not less than two (2) hours during every two (2) weeks of clinical social work practice. More than 100 hours shall not be obtained through group supervision in groups of six (6) or fewer members.

(3) Documentation **that**[which] establishes that an individual has been licensed in another jurisdiction at the clinical level and has been engaged in the active practice of clinical social work in that jurisdiction for five **(5)** years immediately preceding the filing of an application with the board meets the requirement for supervision set forth in this administrative regulation.

Section 8. Evaluation by Board. (1) The period of supervised experience required by KRS 335.100(1)(b) shall be evaluated by the board according to one (1) of the following methods:

(a) Postexperience evaluation. A candidate whose experience was obtained while employed at an agency exempted under KRS 335.010(3), (4) or (5) or while licensed in another state shall submit his application along with appropriate documentation of supervision upon completion of the experience.

(b) Transitional evaluation. A candidate who has accumulated an amount less than the full amount of qualifying experience while employed at an agency exempted under KRS 335.010 (3), (4) or (5) or while licensed in another state, and who is seeking to obtain the remainder of his experience in nonexempt employment, shall submit his application along with appropriate documentation of supervision completed to the date of his application. He shall also submit with his application a contract under paragraph (c) of this subsection for the remainder of the experience.

(c) Preapproved evaluation. Candidates not otherwise exempted under KRS 335.010(3), (4) or (5) shall submit a contract for the experience which will be taking place over the required time period and have the contract approved by the board prior to beginning supervision. This contract shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission.

(2) A certified social worker who desires to practice clinical social work **that**[which] does not qualify as supervised experience pursuant to KRS 335.100(1)(b), shall submit a contract pursuant to KRS 335.080(3). This contract shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission.

Section 9. (1) Changes to that portion of the **Contract for Clinical Social Work Supervision**[supervisory contract which] describes the nature of the practice and experience that the supervisee is to obtain as required by Section 4(5) of this administrative regulation shall be submitted to the board for approval.

(2) If the supervisee changes his supervisor of record, a new **Contract for Clinical Social Work Supervision**[supervisory contract] shall be submitted to the board for approval.

(3) A supervisee shall notify the board by letter of changes of supervisors who are not the supervisor of record, but who are identified in the **Contract for Clinical Social Work Supervision**[supervisory contract] pursuant to Section 4(3) of this administrative regulation.

Section 10. Incorporation by Reference. (1) Contract for Clinical Social Work Supervision, 7/2000 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Board of Social Work has approved this administrative regulation prior to its filing by the Kentucky Board of Social Work with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS Chapter 335.

MARGARET HAZLETTE, Chair

APPROVED BY AGENCY: January 28, 2008

FILED WITH LRC: April 4, 2008 at 10 a.m.

CONTACT PERSON: Gerald W. Hoppmann, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Alcohol and Drug Counselors
(As Amended at ARRS, September 9, 2008)

201 KAR 35:020. Fees.

RELATES TO: KRS 309.084, 309.085(1)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12), 309.085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written and oral examinations which applicants for certification **shall be**[are] required to successfully complete. KRS 309.0813(12) requires the board to promulgate an administrative regulation establishing an initial certification fee and renewal fee. This administrative regulation establishes those fees.

Section 1. Application Fee. (1) The application fee for board review of the Application for Certification as an Alcohol and Drug Counselor[~~application for certification~~] shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

(3) An Application for Certification as an Alcohol and Drug Counselor shall lapse and the fee shall be forfeited if the application packet is not completed within one (1) year from the date it is filed with the board office.

(4)**(a)** If an approved applicant does not successfully complete the examinations required by the board for certification within two (2) years from the date the original application form is filed with the board, the applicant shall update and refile the Application for Certification as an Alcohol and Drug Counselor prior to sitting for the examination again.

(b) The fee for refiling the Application form shall be twenty (20) dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the examinations required by the board through December 31, 2008**;**[~~.~~][~~:~~]

(1) The fee for the written examination shall be $100.

(2)**(a)** The fee for the oral examination shall be $125.

(b) In the event the oral examination is rescheduled at the request of the applicant, a twenty-five (25) dollar fee shall be paid prior to rescheduling of the examination.

(3) The fee for retaking either portion of the examination shall be the same fee established in subsections (1) and (2) of this section, and shall accompany the Application for Re-examination.

(4) Applicants **shall** have the option to sit for the comprehensive examination offered by the International Certification and Reciprocity Consortium by paying the fees **established**[~~set forth~~] in Section 3 **of this administrative regulation**[~~below~~].

Section 3. Comprehensive Examination Fee. (1) Effective January 1, 2009, applicants for certification shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and shall pay a fee of $150.

(2) The fee for retaking the comprehensive examiniation shall be $150.

Section 4. Initial Certification Fee. (1) The initial certification fee shall be $200[~~$180~~] for an applicant for certification.

(2) If the applicant successfully completes all requirements for certification, this fee shall cover certification for the initial three (3) year period.

Section 5.[~~4.~~] Renewal Fees and Penalties. (1)**(a)** A certificate not renewed within ninety (90) days after the holder's renewal date shall be deemed cancelled in accordance with KRS 309.085(2).

(b) A person holding a cancelled certificate shall not use the title "certified alcohol and drug counselor: or hold himself out as **a certified alcohol and drug counselor**[~~such~~].

(2) The following fees and penalties shall be paid in connection with certification renewals:

(a)[~~Fee.~~] The renewal fee for certification shall be $200 for a three (3) year period, and shall accompany the Renewal Application.

(b) The late renewal fee, including penalty, for the ninety (90) day grace period, shall be $250, for certification for a three (3) year period.

Section 6. Reinstatement of a Canceled Certificate. (1) A canceled certificate may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed "Reinstatement Application"; and

(b) Payment of a $300 reinstatement fee, for certification for a three (3) year period.

(2) The applicant for reinstatement of a canceled certificate shall submit proof of completion of twenty (20) hours of continuing education for each year since the date of last active certification.

Section 7. Duplicate Certificate and ID Card Fees. (1) The fee for a duplicate certificate shall be twenty (20) dollars.

(2) The fee for a duplicate ID card shall be ten (10) dollars.

Section 8. Inactive Status Fee. (1) The enrollment fee for voluntarily placing a certificate in inactive status in accordance with 201 KAR 35:080 shall be fifty (50) dollars.

(2) The annual renewal fee for certificates enrolled in inactive status shall be twenty-five (25) dollars.

(3) The fee for reactivation is $200 for a three (3) year period commencing on the date the Board approves the application for reactivation.

Section 9. Continuing Education Fees. (1) For purposes of this administrative regulation a continuing education sponsor shall be defined as an individual or entity that provides a program of continuing education to certificate holders which has been reviewed and approved by the board to meet the continuing education requirements set forth in 201 KAR 35:040.

(2) Approvals may consist of a single workshop or a program of courses and shall be effective for one (1) year from the date of approval.

(3) The fee for approval of an application for a single program provider shall be fifty (50) dollars.

(4) The fee for approval of an application for a continuing education sponsor providing a program of courses shall be $250.

(5) Continuing education sponsors who have received approval for their program of courses may apply for renewal of the approval in accordance with 201 KAR 35:040 and shall pay an annual renewal fee of $150.

(6)**(a)** The fee for review of an application for a substantial change in curriculum of an approved program shall be fifty (50) dollars.

(b) A substantial change shall be considered as the addition of a workshop or course to a pre-approved program, or changes to the content of a pre-approved workshop or program which is in excess of twenty (20) percent.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certification as an Alcohol and Drug Counselor" (2008);

(b) "Application for Re-Examination", 2008;

(c) "Renewal Application", 2008;

(d) "Reinstatement Application", 200); and

(e) "Continuing Education Sponsor Application", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296, ext. 222, Monday through Friday, 8:30 a.m. to 5 p.m.

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 309.

TERRY L. REAMS, Chair

APPROVED BY AGENCY: April 1, 2008

FILED WITH LRC: July 14, 2008 at 1 p.m.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Alcohol and Drug Counselors
(As Amended at ARRS, September 9, 2008)

201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)
STATUTORY AUTHORITY: KRS 309.0813(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.085(1)(b) authorizes the board to promulgate an administrative regulation requiring certified alcohol and drug counselors to complete continuing education requirements as a condition of renewal of [~~their~~] certification. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic **course**[~~courses offered by an accredited postsecondary institution~~]" means a course **offered by an accredited postsecondary institution** beyond the undergraduate level, that is:

(a) An alcohol and drug counseling course, designated by title or content; or

(b) An academic course, relevant to alcohol and drug counseling.

(2) "Approved" means recognized by the Kentucky Board of Certification of Certified Alcohol and Drug Counselors.

(3) "Continuing education hour" means fifty (50) clock minutes of participating in a continuing educational experience.

(4) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or in a series.

(5) "Provider" means an organization approved by the Kentucky Board of Certification for Certified Alcohol and Drug Counselors for providing continuing education programs.

(6) "Relevant" means having content applicable to the practice of alcohol and drug counseling in accordance with the requirements of Section 4(2) of this administrative regulation.

Section 2. Basic Continuing Education Requirements[~~Accrual of Continuing Education Hours; Computation of Accrual~~]. (1) A minimum of sixty (60) continuing education hours shall be accrued by each person holding certification during the three (3) year certification period for renewal [~~with the following exceptions:~~

~~(a) A person holding certification whose renewal date is before January 1, 2000 shall receive twenty (20) hours of continuing education for that renewal only;~~

~~(b) A person holding certification whose renewal date is after January 1, 2000 and before January 1, 2001 shall receive forty (40) hours of continuing education for that renewal only~~].

(2) All hours shall be relevant[~~in or related~~] to the field of alcohol and drug counseling.

(3) All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a certificate. A certificate holder shall determine prior to attending a specific continuing education program that the program:

(a) Has been approved by the board; or

(b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(4) If the specific continuing education program is not preapproved **as established in subsection (3) of this section**[~~per subsection (3) above~~], the certificate holder may apply for board approval by providing the information required **by**[~~in~~] Section 5 of this administrative regulation.

Section 3. Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours applicable to the renewal of the certificate shall be directly related to the professional growth and development of a certified alcohol and drug counselor.

(2) Continuing education hours may be earned by:

(a) Attending a continuing education program that has prior approval by the board;

(b) The completion of appropriate academic coursework; or

(c)[~~attending a continuing education program which has prior approval by the board, completion of appropriate academic coursework, or~~] other alternative methods approved by the board **in accordance with subsection (5) of this section.**

(3) [~~They may be earned by completing any of the following educational activities:(1)~~] Attendance at continuing education programs automatically approved by the board[~~Programs not requiring board review and approval~~]. A program provided,[~~or~~] approved, or sponsored by any of the following providers **and** that is relevant to the practice of alcohol and drug counseling shall be deemed to be [~~relevant to the practice of alcohol and drug counseling and shall be~~] approved without further review by the board **shall be** and [~~are~~] exempt from the program fee **established**[~~set forth~~] in 201 KAR 35:020, Section **9**[~~8~~]:

(a) The National Association of Addiction Professionals (NAADAC) and it's member boards[~~Alcohol and Drug Abuse Counselors (NAADC)~~];

(b)[~~The American Counseling Association (ACA);~~

~~(c) The National Board for Certified Counselors (NBCC);~~

~~(d)~~] The International Certification and Reciprocity Consortium (ICRC);

(c)[~~(e)~~] The Kentucky Cabinet for Health and Family Services, Division[~~Department~~] of Mental Health and[~~, Division of~~] Substance Abuse and its subcontractors;

(d)[~~(f) The Jefferson Alcohol and Drug Abuse Center (JADAC) Training Institute;~~

~~(g)~~] The Kentucky School of Alcohol and Drug Studies;

(e) An Addition Technology Transfer Center (ATTC); and

(f) State or United State Regional Addiction Training Institute.[~~and~~]

(4)(a)[~~(2)~~] Academic coursework. An academic course, as defined in Section 1(1) of this administrative regulation shall not require board review or approval.

(b) A general education course, or elective [~~or~~] designated to meet undergraduate degree requirements, shall [~~not~~] be acceptable for continuing education credit if **it is**[~~the board determines it to be~~] relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.

(5)[~~(3)~~] Alternative methods for obtaining continuing education hours;[~~.~~] programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board **to determine whether or not the program**[~~and determined whether it~~] complies with the requirements of Section 4(2) of this administrative regulation:

(a) A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection **(3)**[~~(1)~~] of this section;

(b) A program or academic course presented by the certificate holder.

1. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction.

2. Credit shall not be issued for repeated instruction of the same course;

(c)**1.** A relevant publication in a professionally recognized or juried publication authorized by the certificate holder.

2. Continuing education hours shall be granted for relevant publications as follows:

a.[~~1.~~] Five (5) continuing education hours for each published abstract or book review in a refereed journal;

b.[~~2.~~] Ten (10) continuing education hours for each book chapter or monograph[~~published article~~];

c.[~~3.~~] Fifteen (15)[~~Twenty (20)~~] continuing education hours for each published article in a refereed journal[~~book chapter or monograph~~]; and

d.[~~4.~~] Twenty (20)[~~Forty (40)~~] continuing education hours for each published book.

Section 4. Procedures for Preapproval of Continuing Education [~~Sponsors and~~] Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 5 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the [~~board determines~~] the activity:

(a) Is an organized program of learning;

(b) Pertains to subject matter relating to alcohol and drug counseling;

(c) Enhances the professional competence of the **certificate**

holder[~~licensee~~] by:

1. Refreshing [~~his~~] knowledge and skills; or

2. Educating on a new topic or subject; **and**

(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensures or certification, or professionally[-]recognized experience.

(3)**(a)** The board may monitor or review a continuing education program approved by the board.

(b) Upon evidence of significant variation in the program presented from the program approved, the board **shall**[~~may~~] withdraw approval of the hours granted to the program.

Section 5. Subsequent[~~Procedures for~~] Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board.

(2) The following information shall be submitted for board review of a program:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor;

(c) A copy of the program agenda indicating hours of education[~~, coffee and lunch breaks~~];

(d) Number of continuing education hours requested;

(e) Official certificate of completion or college transcript from the sponsoring agency or college; and

(f) Application for continuing education credits approval.

Section 6. Application for Approved Sponsor. (1) **A**[~~Any~~] company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a [~~"~~]Continuing Education Sponsor Application **incorporated by reference in**[~~"referenced by~~] 201 KAR 35:020 **shall**, and pay the provider fee **established**[~~set forth~~] in 201 KAR 35:020, Section 9.

(2) **An approved sponsor of continuing education shall be allowed**[~~Designation of Approved Sponsor of Continuing Education status allows the sponsor~~] to advertise the program as preapproved to meet the continuing education requirements for certification renewal.

(3)**(a)** Approval shall be for one (1) year from date of approval unless substantial course changes occur.

(b) For purposes of this section, **a** substantial course change **shall be**[~~means~~] a change in the curriculum in excess of twenty (20) percent.

Section 7. Responsibilities and Reporting Requirements of Certificate Holder; Audit. (1)**(a)** During the certification renewal period, the board shall require up to fifteen (15) percent of all certificate holders to furnish documentation of the completion of the appropriate number of continuing education hours through a random audit process.

(b)[~~All~~] Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process.

(c) Verification of continuing education hours shall not otherwise be[~~by~~] reported to the board.

(2) A certificate holder shall:

(a) Be responsible for obtaining **the** required continuing education hours;

(b) Identify **personal**[~~his own~~] continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills, and activities;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as **established**[~~required~~] in Section **3(4)**[~~3(2)~~] of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity [~~for a period of two (2) years from the date of the renewal~~]; and

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) [~~Comply with the provisions of this administrative regulation.~~]Failure to comply **with this administrative regulation** shall constitute a violation of KRS **309.085(1)(b)**[~~335.340(1)(b)~~] and shall result in **board**:

(a) Refusal to renew certification;

(b) Suspension of certification; or

(c) Revocation of certification.

Section 8.[~~7.~~] Carry-over of Continuing Education Hours[~~,~~] Prohibited. Continuing education hours earned in excess of those required **pursuant to**[~~under~~] Section 2 of this administrative regulation shall not be carried over into the immediately following certification renewal period.

Section 9.[~~8. Board to Approve Continuing Education Hours;~~] Appeal of Denial of Continuing Education Hours by the Board. (1) If an application for approval of continuing education hours is denied, the **certificate holder**[~~person holding certification~~] shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 10.[~~9.~~] Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the certificate holder;

(b) Illness of the certificate holder or an immediate family member; **or**

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the **certificate holder**[~~person holding certification~~]; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the **certificate holder**[~~person holding certification~~] shall reapply for the waiver or extension.

Section 11.[~~10.~~] Continuing Education Requirements for Reinstatement or Reactivation of Certification. (1) A person requesting reinstatement of certification shall:

(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b)**1.** Obtain sixty (60) hours of continuing education within six (6) months of reinstatement of certification.

2. Failure to obtain sixty (60) hours within six (6) months shall result in termination of certification.

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 12.[~~11.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Sponsor Application Form" (2008).

(b) "Continuing Education Program Application Form" (200).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296 ext. 222, Monday through Friday, 8:30 a.m. to 5:00 p.m.[~~"Application for Continuing Education Approval", (1998 Edition), Board of Certification of Alcohol and Drug Counselors, is incorporated by reference.~~

~~(2) It may be inspected, copied, or obtained at Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 309.

TERRY L. REAMS, Chair

APPROVED BY AGENCY: April 1, 2008

FILED WITH LRC: July 14, 2008 at 1 p.m.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 564-3296, ext. 224, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Alcohol and Drug Counselors
(As Amended at ARRS, September 9, 2008)

201 KAR 35:050. Curriculum of study.

RELATES TO: KRS 309.083**(4)**,[~~(5) and~~] (8)

STATUTORY AUTHORITY: KRS 309.083**(4)**[~~(5)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083**(4)**[~~(5)~~] requires that applicants for certification shall have completed 270 classroom hours of board-approved curriculum. This administrative regulation identifies the areas of study that will satisfy the requirement.

Section 1. (1) The 270 classroom hours of curriculum required by KRS 309.083**(4)**[~~(5) and (8)~~] to receive certification as an alcohol and drug counselor shall be specifically related to the knowledge and skills necessary to perform the following twelve (12) core function**, which shall be**[~~which are~~]:

(a)[~~(1)~~] Screening;

(b)[~~(2)~~] Intake;

(c)[~~(3)~~] Client orientation;

(d)[~~(4)~~] Assessment;

(e)[~~(5)~~] Treatment planning;

(f)[~~(6)~~] Counseling;

(g)[~~(7)~~] Case management;

(h)[~~(8)~~] Crisis intervention;

(i)[~~(9)~~] Client education;

(j)[~~(10)~~] Referral;

(k)[~~(11)~~] Reports and recordkeeping; and

(l)[~~(12)~~] Consultation.

(2) A minimum of 135 hours of the total 270 hours **shall be**[~~is~~] specific to alcohol **or**[~~and/or~~] drug treatment.

(3) A minimum of six (6) hours **of the total 270 hours shall be specific to**[~~of~~] professional ethics training relating to counseling; and

(4) Two (2) hours **of the total 270 hours shall be specific to**[~~of training in~~] transmission, control, and treatment of the human immunodeficiency virus[~~is required as part of the 270 hour total~~].

(5) Subsections (2) through (4) shall go into effect January 1, 2009.

Section 2. (1) Attendance at conferences, workshops, seminars, or in-service training related to addictions **shall be**[~~are~~] acceptable to meet the requirements of Section 1 of this administrative regulation if the board determines that **the activity**[~~it~~]:

(a) Is an organized program of learning;

(b) Covers an area listed in Section 1 of this administrative regulation; **and**

(c) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally[-] recognized experience.

(2) One (1) semester hour of study from an accredited college or university credit shall equal fifteen (15) classroom hours.

(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as follows:

(a) A chapter in a book **shall be**[~~is~~] equivalent to ten (10) classroom hours.

(b)**1.** Authoring or editing a book relevant to addictions therapy **shall**[~~may~~] be given credit equivalent to thirty (30) classroom hours.

2. An applicant shall submit a copy of the title page, table of contents, and bibliography.

(c)**1.** Publication in a professional refereed journal is equivalent to fifteen (15) classroom hours.

2. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 3. (1) A list of courses the applicant wishes to have considered shall be organized by core area as **established**[~~set forth~~] in Section 1 of this administrative regulation and shall include documentation to verify that the course satisfies the requirements of that section.

(2) Appropriate documentation of the course shall include:

(a) Date;

(b) Title;

(c) Description;

(d) Sponsoring organization;

(e) Presenter and presenter's credentials;

(f) Number of contact hours attended; and

(g) Certificates of attendance or transcript.

Section 4. Certification as an alcohol and drug counselor in the International Certification and Reciprocity Consortium shall be accepted as evidence that the applicant has met both the educational and experiential requirements for certification **established**[~~set forth~~] in KRS 309.083.

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 309.

TERRY L. REAMS, Chair

APPROVED BY AGENCY: April 1, 2008

FILED WITH LRC: July 14, 2008 at 1 p.m.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Board of Certification of Alcohol and Drug Counselors
(As Amended at ARRS, September 9, 2008)

201 KAR 35:060. Complaint procedure.

RELATES TO: KRS **309.0805(1)**, 309.0813(7), (11), **(13)**, 309.086

STATUTORY AUTHORITY: KRS 309.0813(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.086 **authorizes the board to revoke, suspend, place on probation,**

or restrict a certificate holder and delineates the causes for which disciplinary action may be taken against a certificate holder. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chair" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309**,**[;] the administrative regulations promulgated thereunder**, or another**[; or any other] state or federal statute or regulation.

(3) "Complaint" means **a written allegation of misconduct by a credentialed individual or another person, alleging a violation of:**

(a) KRS Chapter 309;

(b) Administrative regulations promulgated in accordance with KRS Chapter 309;

(c) Another state or federal statute or regulation; or

(d) A combination of paragraphs (a), (b) or (c)[any written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 309, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation].

(4) "Complaint screening committee" means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members, the executive director of the Division of Occupations and Professions or another staff member may be appointed to assist the committee, but shall not have voting privileges.

(5) "Formal complaint" means a formal administrative pleading authorized by the board**, which establishes**[which sets forth] charges against a **certificate holder or another**[licensed individual or other person] and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of **a**[any] matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;

2. Organization; or

3. Entity**;**[.]

(b) Shall be:

1. In writing; and

2. Signed by the person offering the complaint**; and**[.]

(c) May be filed by the board based upon information in its possession.

(2)(a) Upon receipt of a complaint**, a**[:

(a) A] copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(3)(a)[(b)] Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any [other] relevant material available and make a recommendation to the board.

(a) The names of the individuals and other identifying information **shall be**[are] redacted to provide anonymity.

(b) The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint.

(a) The complaint screening committee shall review the investigative report and make a recommendation to the board.

(b) The board shall determine whether there has been a prima facie violation of KRS Chapter 309 or the administrative regulations promulgated thereunder**,** and a complaint **shall**[should] be filed.

(2) If the board determines that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board **shall**[may] issue a written admonishment to the **certificate holder.**

(a)[licensee.] A copy of the written admonishment shall be placed in the permanent file of the **certificate holder.**

(b) The certificate holder[licensee. The licensee] shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in **a**[his] permanent file.

(c) Alternatively, the **certificate holder**[licensee] may file a request for a hearing with the board within thirty (30) days of the admonishment.

(d) Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) If the board determines that a complaint warrants the issuance of a formal complaint against the respondent counsel for the board, in conjunction with the complaint screening committee, shall prepare a formal complaint **that**[which] states clearly the charge or charges to be considered at the hearing.

(a) The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B.

(b) The formal complaint shall be processed in accordance with KRS Chapter 13B.

(5) If the board determines that a person **is**[may be] in violation of KRS 309.0805(1), it shall:

(a) Order the individual to cease and desist from further violations of KRS 309.0805(1); or

(b) Initiate action in Franklin Circuit Court pursuant to KRS 309.0813(13) for injunctive relief to stop the violation of KRS 309.0805(1).

Section 5. Settlement by Informal Proceedings. (1) The board**,** through counsel and the complaint screening committee**,** may[,] at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice of Service of Process. A notice required by KRS Chapter 309 or this administrative regulation shall be issued

pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference. (1) "Complaint Form", **2008, is incorporated by reference** [~~, 2008, is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Certification of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, telephone (502) 564-3296, ext. 222, Monday through Friday, 8:30 a.m. to 5 p.m.

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 309.

TERRY L. REAMS, Chair
APPROVED BY AGENCY: April 1, 2008
FILED WITH LRC: July 14, 2008 at 10 a.m.
CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Board of Certification of Alcohol and Drug Counselors
(As Amended at ARRS, September 9, 2008)

201 KAR 35:070. Supervision and work experience.

RELATES TO: KRS 309.083(4)
STATUTORY AUTHORITY: KRS 309.0813(1), and (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089.[~~In addition,~~] KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be certified. KRS 309.083(4) requires all applicants for certification as an alcohol and drug counselor to have completed 300 hours of board-approved experience working with alcohol or drug dependent persons under the direct supervision of a certified alcohol and drug counselor who has at least two (2) years of postcertification experience. This administrative regulation **establishes**[~~sets forth~~] the standards for the accumulation of the required supervised work experience.

Section 1. Definitions. (1) "Clinical supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing services related to the twelve **(12)** core functions of the alcohol and drug counselor.

(2) "Clinical supervisor" means a certified alcohol and drug counselor who has at least two (2) years of postcertificate experience and who provides supervision to **not**[~~no~~] more than twelve (12) applicants in an individual or group setting at any one (1) time, and whose certificate is currently in good standing with the board.

(3) "Work experience" is defined as the hours spent performing the services, tasks, and reports necessary **for**[~~to~~] providing counseling **or intervention to a chemically dependent person or person's significant others**[~~and or intervention to chemically dependent person(s) or significant others~~].

Section 2. Clinical Supervision. (1) Clinical supervision shall consist of at least 300 hours[~~,~~] and shall include a minimum of ten (10) hours in each of the **following** twelve (12) core functions:

(a) Screening;
(b) Intake;
(c) Client orientation;
(d) Assessment;
(e) Treatment planning;
(f) Counseling;
(g) Case management;
(h) Crisis intervention;
(i) Client education;
(j) Referral;
(k) Reports and recordkeeping; and
(l) Consultation.

(2)**(a)** Clinical supervision may occur in individual or group settings.

(b) The methods of clinical supervision[~~shall~~] include:
1.[~~(a)~~] Face-to-face;
2.[~~(b)~~] Video conferencing; or
3.[~~(c)~~] Teleconferencing.

(3) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.

(4) Clinical supervisors shall complete and submit the Supervisor's form in the Application for Certification as an Alcohol and Drug **Counselor, incorporated by reference in 201 KAR 35:020, Section 10,**[~~Counselors~~] that documents the 300 hours of supervision that has occurred during the work experience.

Section 3. Accumulation of Work Experience. (1) 6,000 hours of work experience shall be accumulated in a setting where chemical dependency services are routinely provided.

(2) Supervised work experience shall be in the twelve (12) core functions referenced in Section 2 of this administrative regulation to enhance the candidate's understanding and application of the twelve (12) core functions to the practice of alcohol and drug counseling.

(3) The work experience may be either paid or unpaid.

Section 4. Substitution of Work Experience. **(1)** An applicant may substitute**, for part of the work experience, a degree in a related field such as:**

(a) Addictions;
(b) Counseling;
(c) Psychology;
(d) Psychiatric nursing; or
(e) Social work.

(2)[~~a degree in a related field to include, but not limited to, Addictions, Counseling, Psychology, Psychiatric Nursing, or Social Work, for part of the work experience.~~] Requests for substitution shall be submitted to the board along with transcripts from an accredited College or University.

(3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.

(a)(1) A master's degree or higher in a related field[~~, as defined above~~], with a specialization in **addictions or drug**[~~addictions/drug~~] and alcohol counseling may be substituted for 4,000 hours of work experience.

(b)[~~(2)~~] A master's degree or higher in a related field[~~, as defined above~~], may be substituted for 3,000 hours of work experience.

(c)[~~(3)~~] A bachelor's degree in a related field[~~, as defined above~~], may be substituted for 2,000 hours of work experience.

(d) A bachelor's degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as **established**[~~set forth~~] in Section 3 of this administrative regulation.

(4) The hours of work experience shall be documented on the candidate's application for certification and shall contain verification by the **supervisor**[~~supervisor(s)~~].

This is to certify that the Chair of the Kentucky Board of Certification of Alcohol and Drug Counselors executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 309.

TERRY L. REAMS, Chair
APPROVED BY AGENCY: April 1, 2008
FILED WITH LRC: July 14, 2008 at 10 a.m.

CONTACT PERSON: Gerald Hoppmann, Director, Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296, fax (502) 564-4818.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 9, 2008)

301 KAR 2:082. Transportation and holding of exotic wildlife.

RELATES TO: KRS 150.010, 150.015,[~~150.180, 150.280, 150.290,~~] 150.305, 150.320, 150.330, 150.990

STATUTORY AUTHORITY: KRS, 150.025[~~(1)~~], 150.180[~~(6)~~], 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.180 requires a person transporting live wildlife into Kentucky to obtain a permit from the department. KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.[~~KRS 150.180(6) requires a person transporting live wildlife into Kentucky to obtain a permit from the department.~~] This administrative regulation establishes the procedure for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts, and Heritage Cabinet.

Section 1. Definitions. (1)[~~Definition.~~] "Exotic wildlife" means terrestrial wildlife species which have never naturally existed in the wild in Kentucky including starling (Sturnus vulgaris), English or house sparrow (Passer domesticus), and Eurasian collared dove (Streptopelia decaocto).

(2) "Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals.

(3) "Permit" means an individual or annual transportation permit issued by the department.

Section 2. Exemptions. Transportation permits and captive wildlife permits shall not be required for the importation or possession of exotic wildlife and federally threatened or endangered species listed in this administrative regulation by facilities that are accredited by the American Zoo and Aquarium Association.

Section 3. Prohibited Species. (1) Except as specified in Section 2 of this administrative regulation and subsection (3) of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:

(a) Baya weaver (Ploceus philippinus)[~~(Plocius phillipinus)~~];
(b) Blackbirds (Genus Agelaius), except native species;
(c) Cape sparrow (Passer melanurus);
(d) Cowbirds (Genus Molothrus), except native species;
(e) Cuckoo (Family Cuculidae), except native species;
(f) Dioch or red-billed[~~red-bellied~~] quelea (Quelea quelea);
(g) European blackbird (Turdus merula);
(h) Fieldfare (Turdus pilaris[~~pilar~~]);
(i) Flying fox or fruit bat (Genus Pteropus);
(j) Gambian giant pouched rat (Cricetomys gambianus);
(k) Giant, marine, or cane toad (Bufo marinus);
(l) Hawaiian rice bird or spotted munia (Lonchura punctulata[~~punctalata nisoria~~]);
(m) Jack rabbit (Genus Lepus);
(n) Java sparrow (Padda oryzivora);
(o) Madagascar weaver (Foudia madagascariensis);
(p) Mistle thrush (Turdus viscivorus);
(q) Monk or Quaker parakeet (Myiopsitta monachus);
(r) Multimammate rat (Subgenus Mastomys);
(s) Mute swan (Cygnus olor);
(t) Nutria (Myocastor coypus);
(u) Prairie dog (Cynomys spp.);
(v) Raccoon dog (Nyctereutes procyonoides);
(w) San Juan rabbit (Oryctolagus[~~Orytolagus~~] cuniculus);
(x) Sky lark (Alauda arvensis);
(y) Song thrush (Turdus philomelus);
(z) Starlings (Family Sturnidae) including pink starlings or rosy pastors (Sturnus roseus), except for Indian Hill mynahs (Gracula[~~Graclua~~] religiosa);
(aa) Suricate or slender-tailed meerkat (Genus Suricata);
(bb) Tongueless or African clawed frog (Xenopus[~~Aenopus~~] laevis);
(cc) Weaver finches (Genus Passer), except Passer domesticus;
(dd) White eyes (Genus Zosterops);
(ee) Wild European rabbit (also called the San Juan Rabbit) not distinguishable morphologically from native wild rabbits;
(ff) Yellowhammer (Emberiza citrinella);
(gg) A member of the following families:
1. Suidae (pigs or hogs), except for domestic swine;
2. Viverridae (civits, genets, lingsangs, mongooses and fossas);
3. Tayassuidae (peccaries and javelinas).

(2) Prohibited inherently-dangerous wildlife. Except as specified in Section 2 of this administrative regulation and subsections (3), (5), and (6)[~~and (5)~~] of this section, a person shall not import or possess in Kentucky the following:

(a) Adders or vipers (Family Viperidae and Crotalidae) (except native species);
(b) Alligators or caimans (Family Alligatoridae);
(c) African buffalo (Syncerus caffer);
(d) Bears (Family Ursidae);
(e) Cheetah (Acinonyx jubatus);
(f) Clouded leopard (Neofelis nebulosa);
(g) Cobras mambas or coral snakes (Family Elapidae);
(h) Crocodiles (Family Crocodylidae);
(i) Elephants (Family Elephantidae);
(j) Gavials (Family Gavialidae);
(k) Gila monsters or beaded lizards (Family Helodermatidae);
(l) Hippopotamus (Hippopotamus amphibius);
(m) Honey badger or ratel (Mellivora capensis[~~campensis~~]);
(n) Hyenas (Family Hyaenidae), all species except aardwolves (Proteles cristatus);
(o) Lions, jaguars, leopards or tigers (Genus Panthera);
(p) Old world badger (Meles meles);
(q) Primates nonhuman (Order Primates);
(r) Rhinoceroses (Family Rhinocerotidae);
(s) Sea snakes (Family Hydrophidae);
(t) Snow leopard (Uncia uncia);
(u) Venomous rear-fanged species (Family Colubridae) except hognose snakes (Genus Heterodon);
(v) Wolverine (Gulo gulo); or
(w) Hybrids of all species contained in this list.

(3) Upon written request, the commissioner may authorize the importation or possession of the species listed in this section by:[~~circuses or for legitimate scientific or educational purposes by:~~]

(a) A zoo or facility that is designated as the official zoo of a municipality;[~~.~~]
(b) A government agency;
(c) A college or university;
(d) A licensed or accredited educational or research institution; [~~or~~]
(e) A lawfully operated circus; [~~or rodeo or~~]
(f) An exhibitor sponsored or contracted by a lawfully operated state or county fair; or
(g)[~~(f)~~] A person or organization requesting exemption for a service animal, as defined by the Americans with Disabilities Act.[~~medical purposes.~~]

~~(4) A person may temporarily transport or display a prohibited animal listed in this section through the state for less than ninety-six (96) hours if at all times the animal is maintained within a confinement sufficient to prevent the animal from escaping.~~]

(4) Wildlife possessed or imported into Kentucky per subsections (3) or (5) of this section shall be maintained within an enclo-

sure suffiecient to prevent:

(a) Escape;

(b) Direct contact with the public; and

(c) Bodily injury to the public.

(5) A person may apply for a transportation permit to temporarily transport or possess a prohibited animal listed in this section if the animal is within the state for less than ninety-six (96) hours. Transportation permits shall not be issued for consecutive ninety-six (96) hour periods.

(6)[(5)] Possession of an inherently-dangerous animal prior to the effective date of the amendment to this administrative regulation.

(a) A person who legally possessed in Kentucky[possesses] an inherently-dangerous animal as defined in subsection (2)[2] of this section prior to July 13, 2005[the effective date of the amendment to this administrative regulation] may continue to possess the animal and [(b) The person] shall maintain:

1. Veterinary records;

2. Acquisition papers for the animal; or

3. Any other evidence[documents] that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.[the effective date of the amendment to this administrative regulation.]

(b)[(c)] A legally-possessed inherently-dangerous animal shall not be bred or replaced without[by a person who does not have] an exemption as established in Sections 2 and 3(3) of this administrative regulation.

[(d) A legally-possessed inherently-dangerous animal shall not be replaced by a person who does not have an exemption as established in Sections 2 and 3(3) of this administrative regulation.]

(7)[(6)] If any inherently-dangerous animal escapes, either intentionally or unintentionally, the owner of the animal shall immediately contact local emergency services and the department at 800-252-3578 to report the escape or release.

Section 4. Exotic Wildlife. Unless listed in Section 3(1) of this administrative regulation, or otherwise protected by state or federal law, exotic wildlife shall not:

(1) Be classified as protected wildlife; and

(2) Require a permit from the department for possession.

Section 5. Transportation Permits and Certificate of Veterinary Inspection. (1) Prior to entry into Kentucky, an annual or individual transportation permit as established in 301 KAR 2:081 shall be obtained for all shipments of wildlife. **A person**[Persons] shall be responsible for applying for a transportation permit **before the person**[who]:

(a) **Receives**[Receive] a shipment of wildlife;

(b) **Imports**[Import] wildlife for their own use or possession; or

(c) **Transports**[Transport] wildlife into and through the state to a destination outside Kentucky;

(2) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.

(a) **An individual transportation permit**[Individual transportation permits] shall be valid for one (1) shipment of wildlife and shall also permit possession of the wildlife for the designated time period.

(b) **An annual transportation permit**[Annual transportation permits] shall be valid for multiple wildlife shipments for one (1) year from the date of issue and shall also permit possession of the wildlife for the designated time period.

(c) An annual transportation permit holder[Annual transportation permit holders] shall:

1. Notify the department in writing of any changes or additions subsequent to the original application so that an amended permit may be issued prior to subsequent wildlife importation; and

2. Notify the wildlife division[department] by telephone at 502-564-3400 or 800-858-1549 Monday through Friday between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife of with:[the date of expected shipment; source of the shipment; and the species being shipped.]

a. The date of expected shipment;

b. The source of the shipment;

c. The species being shipped;

d. The number of individuals of each species; and

e. The period of time when the wildlife will be inside the state of Kentucky.[the date of expected shipment; source of the shipment; and the species being shipped.]

(3) All shipments of wildlife, except for fish, amphibians, and reptiles, shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free from[of] symptoms of disease. A federal quarantine certificate may be substituted for the certificate of veterinary inspection.

Section 6. The following animals shall not require permits from the department for importation:

(1) Alpaca (Vicugna[Lama] pacos);

(2) American bison (Bison bison);

(3) Breeds and varieties of goats derived from the wild goat or bezoar (Capra aegagrus);

(4) Camels (Camelus bactrianus and Camelus dromedarius);

(5) Chinchillas (Chinchilla laniger);

(6) Cockatoos (family Cacatuidae);

(7) Domesticated races of ducks and geese (family Anatidae) distinguishable morphologically from wild ducks or geese;

(8) Domesticated races of the European rabbit (Oryctolagus cuniculus) distinguishable morphologically from wild rabbits;

(9) Domesticated races of mink (Mustela vison), if:

(a) Adults are heavier than 1.15 kilograms; or

(b) The fur color can be distinguished from wild mink;

(10) Domestic swine, except free-roaming or feral wild boars or wild swine;

(11) Domesticated races of rats (Rattus norvegicus or Rattus rattus) or mice (Mus musculus);

(12) Domesticated races of turkeys (Meleagris gallopavo) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;

(13) Domestic yak (Bos grunniens);

(14) Gerbils (Meriones unguiculatus);

(15) Guinea fowl (Numida[Mumida] megeagris);

(16) Guinea pigs (Cavia porcellus);

(17) Hamsters (Mesocricetus spp.);

(18) Indian Hill mynahs (Gracula[Graclua] religiosa);

(19) Llama (Lama glama);

(20) Parrots, lovebirds, cockatiels, budgerigar, parakeets (except monk parakeet (M. monachus), macaws (family Psittacidae);

(21) Peafowl (Pavo cristatus);

(22) Pigeons (Columba domestica or Columba livia) or domesticated races of pigeons;

(23) Ratites, as defined by KRS 247.870; and

(24) Toucans (family Rhamphastidae).[;]

Section 7. Applying for Permits. (1) **An application for a permit shall be made on the appropriate form**[All applications for [transportation] permits shall be made on standard forms].

(2) The applicant shall indicate the source of supply of the wildlife.

(3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

(4) A permit holder shall show this written proof to a conservation officer upon request.

(5) **An applicant**[Applicants] shall possess an approved permit before transporting exotic wildlife into Kentucky[acquiring animals].

(6) **A permit application**[Permit applications] may be denied if the permit holder has been convicted of **a violation of:**

(a)[**Violations of**] Any provision in this administrative regulation; or

(b) Another federal or state wildlife law regarding the holding or transportation of exotic wildlife.

(7)[(6)] Failure to provide accurate, truthful and complete information on the application form shall result in:

(a) Immediate withdrawal or revocation of the permit; and

(b) Confiscation of the wildlife imported under the permit.

(8) An applicant shall be responsible for knowing and following local ordinances and rules regarding the wildlife to be held in a locality.

Section 8. Endangered Species. A permit may[~~shall not~~] be issued for the transportation or possession of federally endangered or threatened species if:

(1) It is not listed in Section 3 of this administrative regulation; and

(2) Proof of lawful possession and acquisition is provided.[~~without obtaining prior approval from the commissioner. The commissioner may grant approval for legitimate scientific or educational purposes for:~~

~~(1) A zoo that is designated as the official zoo of a municipality;~~

~~(2) A government agency;~~

~~(3) A college or university; or~~

~~(4) A similar educational or research institution.~~]

Section 9. Inspections and Permit Revocation. (1) A person holding exotic wildlife shall allow a conservation officer to inspect the holding facilities at any reasonable time.

(2) **Captive**[~~All captive~~] wildlife may be confiscated and the permit revoked if the permit holder violates any provision **of this**[~~in this~~] administrative regulation.

Section 10. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Annual Transportation Permit Application, June 2008[~~January 2006~~] edition"; and

(b) "Individual Transportation Permit Application, June 2008[~~January 2006~~] edition."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY T. KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 9, 2008)

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150.010, 150.180, 150.990
STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.178, 150.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to establish hunting seasons, regulate bag and possession limits, and determine the methods and devices used to take wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit organizations. KRS 150.178 authorizes the department to issue elk permits to landowners who enroll property for public hunting access. KRS 150.390 authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, and procedures for elk damage abatement and any post-season hunt to be held after the quota hunts. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Antlered elk" means an elk with one (1) antler possessing four (4) or more antler points that are each at least one (1) inch long when measured from the main beam which also counts as one (1) point.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(4) "Elk" means Cervus elaphus nelsoni.

(5) "Elk Hunting Unit" or "EHU" means a designated area within the elk restoration zone possessing specific elk management restrictions.

(6) "Elk Management Unit" or "EMU" means a designated area within the elk restoration zone, possessing specific elk management restrictions during a postseason antlerless quota hunt.

(7)[~~(6)~~] "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for five (5) years.

(8)[~~(7)~~] "Out-of-zone" means all counties not included in the restoration area.

(9)[~~(8)~~] "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk causing property damage by department personnel, the property owner, or another designated person. A person authorized to destroy an elk causing damage shall not:

(a) Move the elk until he has attached a disposal permit provided by the department to the carcass; and

(b) Remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk hunt application period shall be December 1 to April 30.

(2) A person shall apply for the elk quota hunt via the department's Web site, the toll-free phone number listed in the current Kentucky Hunting and Trapping Guide, or a Kentucky license vendor. The applicant shall provide the following information:

(a) The applicant's name, Social Security number, date of birth, and mailing address or phone number; and

(b) A nonrefundable application fee.

(3) An applicant shall not apply more than once per application period.

(4) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(5) There shall be a random electronic drawing.

(6) Two (2) permits, one (1) antlered and one (1) antlerless, shall be available for a special youth-only hunt to be held during the regular seasons.

(a) An applicant who has not reached his or her sixteenth birthday by the last day of the application period shall be entered into the special youth drawing. An applicant not drawn for the special youth permits shall automatically be entered into the regular drawing.

(b) The application period and fee for the special youth draw shall be the same as the elk quota hunt application period set forth in subsection (1) of this section[~~that for the regular elk hunt~~].

(c) A special youth hunt permit shall be valid for the assigned EHU during seasons specified in Section 6 of this administrative regulation.

(7) No more than ten (10) percent of all drawn applicants shall be nonresidents.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner may issue one (1) either-sex elk permit per each 5,000 acres for each year of the agreement to a landowner cooperator.

(2) Recipients of landowner cooperator permits shall comply with the seasons, bag limit, and hunter requirements in Sections 5

and 6 of this administrative regulation.

(3)[~~(2)~~] A landowner cooperator permit is transferable, but shall be used only on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) The landowner cooperator or person who has received a landowner cooperator permit shall provide the following information to the department before the transferee shall hunt:[~~shall provide the following information to the department about the transferred permit holder:~~]

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(c) The permit shall **not**[~~no longer~~] be transferable after being used for the harvest of one (1) elk.

(4)[~~(3)~~] Public access agreements with the department shall be recorded in writing.[~~in Memorandums of Understanding.~~

~~(4) Recipients of landowner cooperator permits shall comply with the provisions of this administrative regulation.~~]

Section 5. Hunter Requirements. (1) The statewide bag limit shall be one (1) elk per hunter per license year.

(2) A drawn applicant or a person who legally receives a landowner cooperator permit or a special commission permit issued pursuant to 301 KAR 3:100 may be accompanied by up to two (2) other individuals.

(3)[~~(2)~~] A drawn applicant shall be assigned to a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns land in the elk restoration zone may hunt on his or her land.

(4)[~~(3)~~] An elk hunter or any person accompanying an elk hunter shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest pursuant to[~~per~~] 301 KAR 2:172.

(5)[~~(4)~~] An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except for leashed tracking dogs to recover wounded elk;

(c) Hunt over bait as defined in 301 KAR 3:010;

(d) Drive elk from outside the assigned EHU;

(e) Take swimming elk;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk from a vehicle or boat or while on horseback. A disabled hunter who has a [~~disabled~~] hunting method exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(6)[~~(5)~~] An elk hunter hunting in the restoration zone shall display a vehicle tag issued by the department in the windshield of his or her vehicle at all times while hunting elk.

(7)[~~(6)~~] A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the person's firearm.

(8)[~~(7)~~] An adult accompanying a person under (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(9)[~~(8)~~] A hunter may use any firearm, archery equipment, or crossbow legal for hunting deer pursuant to 301 KAR 2:172, except an elk hunter shall not possess or use:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm of less than 27 caliber;

(c) A muzzle-loading firearm of less than 50 caliber;

(d) A shotgun of less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than 0.270 inches (.270 caliber)[~~or greater~~], and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A hunter may use archery equipment:

(a) Beginning the first Saturday in October through the third Monday in January for antlered elk; and

(b) Beginning the second Saturday in October through the third Monday in January for antlerless elk.

(2) A hunter may use a modern firearm, muzzleloader, or crossbow:

(a) For seven (7) consecutive days beginning the first Saturday in October for antlered elk; and

(b) For fourteen (14) consecutive days beginning the second Saturday in December for antlerless elk.

(3) A hunter may use a crossbow for antlered or antlerless elk:[~~either sex:~~]

(a) From the second Saturday in October through the end of the third full weekend in October; and

(b) From the second Saturday in November through December 31.

(4) The statewide season bag limit shall be one (1) elk per hunter.

(a) A quota elk hunter shall only take an elk of the sex determined by the permit drawn.

(b) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in either the antlered-only or antlerless-only[~~antlered only or antlerless only~~] quota hunts.

Section 7. EHU boundaries. EHU's shall be designated as follows:

(1) EHU 1 - Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds southeast following the Tug Fork to the Pike County/Buchanan County, Virginia line. The boundary then proceeds southwest following the Kentucky/Virginia state line to US Hwy 23. The boundary proceeds north following US Hwy 23 to the Johnson/Lawrence County line. The boundary proceeds east following the county line of Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 - Starting at the Johnson/Lawrence County line on US Hwy 23, the boundary proceeds south to the intersection of US Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolfe County line. The boundary then follows the county lines of Magoffin/Wolfe County, Magoffin/Morgan County, and Johnson/Morgan County northeast to US Hwy 23, completing the boundary.

(3) EHU 3 - Starting at the intersection of US Hwy 23 and State Hwy 80, the boundary proceeds south following US Hwy 23 to the intersection of US Hwy 23 with the Kentucky/Virginia state line. The boundary then follows US Hwy 119 west to the intersection of US Hwy 119 with State Hwy 15. The boundary then follows State Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and US Hwy 23, completing the boundary.

(4) EHU 4 - Starting at the Breathitt/Wolfe County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Laurel County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Owsley County, Perry/Owsley County, Breathitt/Owsley County, Breathitt/Lee County, and Breathitt/Wolfe County northeast to State Hwy 15 at the Breathitt/Wolfe County line, completing the boundary.

(5) EHU 5 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and US Hwy 119. The boundary then follows US Hwy 119 east to the intersection of US Hwy 119 and US Hwy 23. The boundary then follows US Hwy 23 south to the intersection of US Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia state line southwest to the intersection of the state line with US Hwy 421. The boundary then follows US Hwy 421 north to the intersection of US Hwy 421 and State Hwy 66, then north along 66 to the intersection of 66 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(6) EHU 6 - Starting at the intersection of the Hal Rogers

Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with US Hwy 421. The boundary then proceeds south on 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Wayne/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county lines of McCreary/Wayne County, McCreary/Pulaski County, McCreary/Laurel County, Whitley/Laurel County, Knox/Laurel County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County Line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

Section 8. Postseason Quota Hunt for Antlerless Elk on Private Land. (1) A modern firearms hunt for antlerless elk shall take place beginning on the fourth 4th Saturday in January for fourteen (14) consecutive days.

(2) Hunters shall be randomly drawn from the pool of applicants who were not drawn for the quota hunt immediately preceding the postseason hunt.

(3) Drawn applicants shall comply with the requirements in Section 5 of this administrative regulation except that applicants may hunt only in the EMU to which they are assigned or on land they own within another EMU.

(4) EMU's shall be designated as follows:

(a) Knott County EMU. Starting at the intersection of State Hwys 7 and 899 south of Dema, the boundary then proceeds south along 899 to the intersection with State Hwy 160 near Brinkley, then south on State Hwy 160 to the intersection of State Hwy 160 and State Hwy 582 near Littcarr, then east on State Hwy 582 to the intersection of State Hwys 582 and 7. The boundary then proceeds north on State Hwy 7 to the intersection with State Hwy 899, thus completing the boundary.

(b) Stoney Fork EMU. Starting at the intersection of State Hwy 2058 and US Hwy 421 near Helton, the boundary then proceeds south along US Hwy 421 to the intersection of US Hwy 421 and US Hwy 119 near Harlan, then west along US Hwy 119 to the intersection of US Hwy 119 and US Hwy 25E. The boundary then goes north following US Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to US Hwy 421 at Helton, thus completing the boundary.

(4) Public hunting areas shall be closed to elk hunting during this season.

Section 9.[~~7.~~] Tagging and Checking Requirements. Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(1) Record the species, sex, date, and county of kill on a hunter's log;

(2) [~~Attach the tag portion of the permit to the carcass before moving the carcass; and~~

~~(3)~~] Check the harvested elk by calling 800-245-4263 [~~the toll-free number listed in the current Kentucky Hunting and Trapping Guide~~] and recording the confirmation number on a hunter's log; and

(3) If hunting in the elk zone during the elk quota hunts, attach a department-issued tag to the carcass before moving it.

Section 10.[~~8.~~] Elk Hunting on Public Land. (1) A drawn applicant or recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests, Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.

(2) Portions of Paintsville Lake WMA lie outside the restoration zone and are subject to the requirements established in Section 11[9] of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as set forth in Section 6 of this administrative regulation.

(b) Firearms shall not be used to hunt elk.

Section 11.[~~9.~~] Out-of-zone Elk Hunting. (1) The methods of taking and seasons established in 301 KAR 2:172 shall apply to taking elk outside of the restoration zone.

(a) In order to harvest an out-of-zone elk, a hunter shall be a legal deer hunter and shall possess an out of zone elk permit.

(b) Landowners are exempt from this permit requirement as per KRS 150.170.

(2) Either sex elk may be taken and shall not count towards the deer bag limit.

(3) Elk harvested out-of-zone shall be telechecked in accordance with Section 9[~~7~~] of this administrative regulation.

Section 12.[~~10.~~] A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit. Approved by the Fish and Wildlife Commission June 13, 2008.

BENJY KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext 4507, fax (502) 564-9136.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 9, 2008)

301 KAR 2:176. Deer control tags and destruction permits.

RELATES TO: KRS 150.010,[~~150.105,~~] 150.170, 150.175, [~~150.340,~~] 150.360, 150.390,[~~150.395,~~] 150.990

STATUTORY AUTHORITY: KRS 150.025, 150.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.105 allows the commissioner to authorize the destruction of wildlife[~~that is~~] causing damage. KRS 150.025 authorizes the department to promulgate administrative regulations for taking wildlife.[~~regulating the taking of wildlife.~~] This administrative regulation establishes the procedures under which deer may be taken to alleviate localized agricultural and wildlife habitat damage until it is appropriate to apply deer herd stabilization or reduction measures on a county-wide basis through regular hunting seasons. It also establishes the requirements and procedures for taking deer outside the statewide seasons. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Damage to wildlife habitat" means:

(a) The existence of a browse line caused by deer; or

(b) Damage to more than thirty-five (35) percent of native plant species preferred by deer.

(2) "Deer control tag" means a tag issued by the department which authorizes a hunter to take antlerless deer during an open deer season pursuant to 301 KAR 2:172.

(3) "Deer destruction permit" means written authorization from the department[~~, pursuant to KRS 150.105,~~] to take deer outside the [~~regular~~]hunting season framework set forth in 301 KAR 2:172.

(4) "Deer food plot" means a crop or cultivated plants grown to attract and feed deer.

(5) "Department representative" means a department employee who is qualified and authorized by the commissioner to assess deer damage.

(6) "Landowner" means the person who has title to a particular property.

Section 2. Qualifying for Deer Control Tags. (1) A landowner with fewer than 1,000 contiguous acres shall qualify for deer control tags if:

(a) Deer hunting occurred[~~He has permitted deer hunting~~] on the property during the previous deer season;

(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and

(c) A department representative certifies deer damage to crops, gardens, property or wildlife habitat.

(2) A landowner with 1,000 contiguous acres or more shall qualify for deer control tags[~~without evidence of damage~~] if:

(a) Deer hunting occurred[~~He has permitted deer hunting~~] on the property during the previous deer season;

(b) **Deer**[~~If~~][~~According to the judgement of the department representative, regular~~][~~deer~~] seasons and bag limits as set forth in 301 KAR 2:172 are determined by a department representative to be inadequate to control deer populations on the property; and

(c) The landowner agrees to:

1. Follow the deer management practices recommended by the department[~~representative~~]; and

2. Supply the department with weight, age and condition data of[~~on~~] deer taken from the[~~his~~] property.

(3) A department representative shall make an on-site inspection of each property for which a request for deer control tags has been made, unless the property:

(a) Has been previously inspected by the department and the landowner affirms that deer damage still exists; or

(b) Is immediately adjacent to property assessed by a department representative as having severe deer damage.

(4) A landowner whose property is immediately adjacent to property assessed by a department representative as having severe deer damage **shall**[~~may~~][~~shall~~] be issued damage control tags upon request of the landowner[~~, even if there is no evidence of deer damage on his or her property~~].

(5) The department shall not issue deer control tags to a landowner whose only damage is to a deer food plot.

Section 3. Applying for Deer Control Tags. (1) A landowner wishing to apply for deer control tags shall contact the department through:

(a) A conservation officer; or

(b) The private lands[~~appropriate district wildlife~~] biologist for the county in which the property is located.[~~; or~~

~~(c) The Division of Wildlife in Frankfort.~~]

(2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage.

(3) A request for an assessment shall be made on or before September 30 to be eligible for current year deer[~~damage~~] control tags.

(4) A request for an assessment made after September 30 shall be considered for the following year.

Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each landholding based on the recommendation of the department representative.

(2) Except as provided in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag if:

(a) The county deer season is adequate to achieve the desired reduction in deer numbers; or

(b) Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner's name.

(2) A landowner:

(a) May transfer a deer control tag to another person;

(b) Shall not issue more than five (5) deer control tags to an individual; and

(c) Shall require hunters to sign a deer control tag at the time of transfer[~~; and~~

~~(d) Shall return unissued tags to the department before January 25~~].

Section 6. Use of Deer Control Tags. (1) A deer control tag shall not be valid except on the landholding for which it was issued.

(2) A deer control tag shall expire after the license year for which it was issued.

(3) A person using a deer control tag:

(a) Shall have in[~~his~~] possession:

1. A valid deer control tag [~~with his signature~~]; and

2. A valid hunting license and[~~the receipt portion of a~~] current deer permit, unless exempt from license or permit requirements pursuant to[~~by~~] KRS 150.170;

(b) May use deer control tags during archery, crossbow, and gun or muzzle-loader seasons to take antlerless deer;

(c) Shall not take more than five (5) deer per license year with deer control tags; and

(d) Shall abide by the provisions of 301 KAR 2:172, except that [~~he shall~~]:

1. Antlered deer shall not be taken; and[~~Not take antlered deer;~~]

2. The control tag shall[~~must~~] remain attached to the carcass until final processing or disposal.[~~Tag deer with the deer control tag rather than the carcass tag portion of the deer permit.~~]

(4) Deer taken with a deer control tag shall not count toward the annual limit as specified in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may issue a deer destruction permit:

(a) To a person authorized by the commissioner to remove deer that are or may become a public safety or environmental threat or that have entered a permitted captive cervid facility;

(b) To a landowner:

1. Who continues to experience damage after being issued deer control tags; or

2. Whose property cannot be hunted legally and deer are posing a public safety or environmental threat;

(c) To a captive cervid facility permit holder or applicant:

1. Whose fence meets the fencing and holding requirements in 301 KAR 2:083; and

2. Who has attempted to remove wild deer using nonlethal methods or statewide deer seasons as set forth in 301 KAR 2:172.

[~~(a) To a landowner:~~

~~1. Who continues to experience damage after being issued deer control tags; or~~

~~2. Whose property cannot legally be hunted; and~~

~~(b) Where deer are posing a public safety or environmental threat.~~]

(2) A deer destruction permit shall specify:

(a) The number and sex of deer to be destroyed;

(b) The method of destruction;

(c) The name of the person who will destroy the deer; and

(d) The dates during which the destruction will take place.

(3) A deer destruction permit shall not be issued without the recommendation of a representative of the department and the approval of the commissioner.

(4) A person destroying deer shall:

(a) Attach a disposal permit[~~tag~~] provided by the department to each carcass;

(b) Not remove the disposal permit[~~tag~~] until the carcass is processed or disposed of; and

(c) If an antlered deer was taken, turn the antlers in to the department.

(5) A deer destruction permit shall not be used except as specified on the permit.

(6) Nothing in this administrative regulation shall prohibit a landowner or tenant from taking action to control deer that are posing a direct and immediate threat to life or property.

Section 8. Denial or Revocation or Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department may revoke a deer control tag or destruction permit and deny a future tag or permit to a person who:

(a) Fails to comply with the requirements of this administrative regulation;

(b) Is convicted of a violation of 301 KAR 2:083, 2:132, 2:172, or 2:178.

(2) An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B. [~~deer administrative regulation violation; or~~

~~(c) Otherwise abuses the Deer Control Tag Program.~~

~~(2) An appeal of a revocation or a denial of eligibility shall be submitted:~~

~~(a) In writing to the commissioner; and~~

~~(b) Within sixty (60) days of the date of the revocation or denial.~~

~~(3) An appeal of the commissioner's decision shall be made in writing to the Fish and Wildlife Resources Commission within sixty (60) days of the commissioner's decision.~~

~~(4) The Fish and Wildlife Resources Commission shall hear the appeal at its next regularly scheduled meeting.~~]

BENJY KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, September 9, 2008)

301 KAR 4:070. Scientific and educational collecting permits.

RELATES TO: KRS 150.010, 150.170,[~~150.025,~~] 150.180, 150.195,[~~150.183, 150.275, 150.305, 150.365, 150.460,~~]150.990

STATUTORY AUTHORITY: KRS 150.025, 150.275, 150.183[~~150.183(3)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025, 150.183 and 150.275 [~~150.183(3)~~] authorizes the department to promulgate administrative regulations regarding the possession of[~~any species of~~] wildlife for zoological, educational or scientific purposes and grants the commissioner the authority to issue a scientific or educational permit to a qualified person. This administrative regulation establishes the procedures for applying for a Scientific and Educational Collecting Permit from the department, procedures for collecting wildlife and procedures for reporting collected wildlife. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Agent" of the state" means a status that will be granted only to other Kentucky government agencies or those individuals conducting work on projects conducted on behalf of the department

(2) "Educational wildlife collecting" means the taking and subsequent possession or release of protected wildlife by an individual or nonprofit organization for use in the bona fide instruction of students or for a university-related research project.

(3)[~~(2)~~] "Federally-protected species" means any wildlife species listed by the United States Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

(4)[~~(3)~~] "Protected wildlife" is defined by KRS 150.010.

(5)[~~(4)~~] "Scientific wildlife collecting" means the taking and subsequent possession or release of protected wildlife specimens for the purposes of conducting scientific investigations or evaluations for which remuneration is received.

(6)[~~(5)~~] "Watershed" means an 8-digit Hydrologic Unit Code (HUC) as defined by the United States Geological Survey.

Section 2. Permit Required. (1) A permit shall be required by all persons, except an employee of the department engaged in his or her official duties, involved in scientific or educational collecting of any protected wildlife in the state of Kentucky[~~, except an employee of the department engaged in his or her official duties~~].

(2) Federally-protected wildlife shall not be collected unless the collector holds a Scientific or Educational Collecting Permit from the department and a valid federal permit or a letter designating him or her as an agent of the state[~~department~~].

(3) A Scientific or Educational Collecting Permit shall not be used in lieu of a hunting, fishing, or trapping license.

Section 3. Federally-protected species. (1) An application for a Scientific or Educational Collecting Permit for all federally-protected species and fishes within a watershed known to harbor federally threatened or endangered fish species shall be accompanied by a project proposal stating the specific goals and locations of the collecting activities.

(2) A person who applies for a Scientific or Educational Collecting Permit for bats, mussels, copperbelly watersnakes or federally protected species shall submit a written affidavit stating he or she possesses the ability to identify federally protected species in the field.

(3) A person who applies for a Scientific or Educational Collecting Permit for fishes who wishes to collect in a watershed known to harbor federally threatened or endangered fish species, or is specifically sampling for those species, shall submit a written affidavit stating he or she possesses the ability to identify federally- protected fish species in the field.

(4) Federally-threatened or endangered species shall[~~may~~] not be killed intentionally. Federally threatened or endangered species inadvertently killed shall be reported to the Kentucky Department of Fish and Wildlife Resources Wildlife Diversity Program at 1-800-858-1549[~~or via email sunni.carr@ky.gov~~] within twenty-four (24) hours of death and all specimens submitted to the department within seven (7) days of taking.

(5) A department-approved, qualified person as listed on the Scientific or Educational Collection Permit shall be present at all collection activities involving:

(a) Bats;

(b) Mussels;

(c) Fishes within watersheds known to harbor federally protected fishes; or

(d) Federally-protected species.

(6) For collection activities involving federally threatened or endangered species, the Scientific or Educational Collecting Permit holder shall:

(a) Hold a valid federal permit or a letter designating him or her as an agent of the state[~~department~~]; and

(b) Notify the Wildlife Diversity Program Coordinator weekdays between 8 a.m. and 4:30 p.m. at (800) 858-1549 [~~or via email sunni.carr@ky.gov~~][~~and local wildlife and boating officer~~] at least fifteen (15)[~~five (5)~~] days in advance of collection activities.

Section 4. Issuance of Permits, Possession Requirements, and Revocation. (1) Issuance of permits. A permit may[~~shall~~] be issued upon receipt of:

(a) A completed application;

(b) A Scientific and Educational Collecting Permit Qualifications Form for each person listed on the application;

(c) Supporting materials as required in Section 3 of this administrative regulation; and

(d) Remittance of the correct fee as listed in 301 KAR 3:022.

(2) A permit is valid from January 1 through December 31 of the same year.

(3) Possession requirements. At least one (1) person in a field party shall carry a valid Scientific or Educational Collecting Permit or photocopy of the same. Each person collecting protected wildlife shall be listed on the Scientific or Educational Collecting Permit.

(4) Suspension. A scientific or educational collecting permit may be suspended while infractions are investigated or pending results of court proceedings or litigation.

(5)[~~(4)~~] Revocation.

(a) Scientific or Educational Collecting Permits shall be revoked without refund if the permittee is found in violation of or convicted of violating any federal or state law or regulation involving the collection of protected wildlife as listed in this administrative regulation.[~~a violation a Federal fish and wildlife law, a Kentucky fish and wildlife law including KRS Chapter 150, KAR Title 301, or another state's fish and wildlife law.~~]

(b) A Scientific or educational collecting permit[permits] shall be revoked without refund if the permittee falsifies any application document.

(c)[(b)] A person whose permit has been revoked shall be ineligible to apply for another Scientific or Educational Collecting Permit or be an assistant on another Scientific or Educational Collecting Permit for a period of one (1) year.[three (3) years.]

(d)[(c)] An individual whose permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 5. Reporting Requirements. (1) Invertebrates. The following list of invertebrates shall be reported per the specifications outlined in subsection (2) of this section.

a. Mussels (Class Bivalvia);

b. Crayfish (Order Decopoda); and

c. Federally threatened or endangered invertebrates.

(2) Scientific Collecting Permit.

(a) Data shall be submitted annually and prior to renewal of new permits.

(b) Data shall be in a format specified by the department.

(c) Required data shall include:

1. Scientific name (Genus and species) of each species recorded/collected;

2. Site location including:

a. County; and

b. 7.5-minute USGS topographic quadrangle name;

3. Longitude and latitude in degrees/minutes/seconds format North American Datum 1983 of each species occurrence/collection;

4. Date of occurrence/collection;

5. Number of individuals recorded/collected for each species;

6. Observers for each record; and

7. Disposition of the specimen.

(3) Educational Collecting Permit.

(a) University-related research projects. Data shall be submitted per the specifications outlined in subsection (1)[1] of this section.

(b) With the exception outlined in subsection (2)[2(a)] of this section, no data reporting requirements shall exist for Educational Collecting Permit holders.

Section 6. Disposition of Collected Wildlife. All captured protected wildlife not killed shall be released at the capture location.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Scientific and Educational Collecting Permit Application, edition 2008[2003]";

(b) "Scientific and Educational Collecting Permit Qualifications Form, edition 2003"; and

(c) "Map of 8-digit USGS HUC of Kentucky, edition August 2003".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane[#1 Game Farm Road], Frankfort, Kentucky, Monday through Friday, 8:30 a.m. to 4:30 p.m.

BENJY KINMAN, (Acting) Deputy Commissioner, for
Dr. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 208 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 9, 2008)

401 KAR 5:052. Requirements applicable to cooling water intake structures for facilities regulated by Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

RELATES TO: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 33 U.S.C. 1251-1387, **EO 2008-507, 2008-531**

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R. 125.80-125.89

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the[Energy and Environment] cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into waters of the Commonwealth. KRS 224.16-050 provides that the cabinet may issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Clean Water Act, 33 U.S.C. Section 1251-1387, subject to the conditions imposed in 33 U.S.C. Section 1342(b) and (d). **EO 208-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.** This administrative regulation establishes the requirements applicable to cooling water intakes structures for new facilities under Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

Section 1. Requirements for New Facilities. (1) Requirements for new facilities pursuant to Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b), shall be as established in the following federal regulations:

(a) 40 C.F.R. 125.80, July 1, 2007;

(b) 40 C.F.R. 125.81, July 1, 2007;

(c) 40 C.F.R. 125.82, July 1, 2007;

(d) 40 C.F.R. 125.83, July 1, 2007;

(e) 40 C.F.R. 125.84, July 1, 2007;

(f) 40 C.F.R. 125.85, July 1, 2007;

(g) 40 C.F.R. 125.86, July 1, 2007;

(h) 40 C.F.R. 125.87, July 1, 2007;

(i) 40 C.F.R. 125.88, July 1, 2007; and

(j) 40 C.F.R. 125.89, July 1, 2007.

(2) Substitutions. The following terms shall be substituted in the federal regulations cited in subsection (1) of this section:

(a) "Waters of the Commonwealth" shall replace "Waters of the United States"; and

(b) "Cabinet" shall replace "Director".

Section 2. Political subdivisions and interstate agencies may adopt or enforce requirements that are more stringent than this administrative regulation.

LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: July 9, 2008
FILED WITH LRC: July 14, 2008
CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 9, 2008)

401 KAR 6:001. Definitions for 401 KAR Chapter 6.

RELATES TO: KRS 223.400-223.460, 223.991, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish

administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation is necessary to define terms used by the cabinet in 401 KAR Chapter 6.

Section 1. Definitions. (1) "Abandon" means to seal or plug a well to prevent entry of surface water or contaminants and to prevent mixing of water from different water-bearing formations.

(2) "Annular space" means the opening between a well-bore or excavation and the well casing or between an outer casing pipe and an inner casing pipe or liner pipe.

(3) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(4) "Bedrock" means a consolidated rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.

(5) "Bentonite" means a clay in the montmorillonite series with a predominance of sodium as its major cation, having the property of expanding several times its original volume if saturated, and used to seal or plug well annuluses and well bores.

(6) "Board" is defined by KRS 223.400(2).

(7) "Bridging" means the deliberate or accidental closing or plugging of a section of a drill hole or annulus, beneath which is an open borehole or unfilled annulus.

(8) "Confining zones" and "confining formation" means[~~mean~~] a body of sufficiently impermeable material as to impede the vertical migration of groundwater.

(9) "Consolidated formation" means a geological formation that is bedrock.

(10) "Construction" means all acts necessary for obtaining groundwater by wells, including drilling or excavation of the well and installation or modification of casing, but excluding the installation of permanent pumps and pumping equipment.

(11) "Driller" means "water well driller" as defined by KRS 223.400(8).

(12) "Drilling derived waste" or "DDW" means soils, drill cuttings, drilling fluids, product-contaminated water, and decontamination rinsate.

(13) "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well.

(14) "Grout-pipe method" means that grout is emplaced into the borehole[~~bore hole~~] or annulus via gravity flow through a pipe or apparatus with a funnel or hopper-like top.

(15) "High solids sodium bentonite" means bentonite containing a minimum of thirty (30) percent solids.

(16) "Impervious" means a material that will not permit the passage of water at a rate greater than 1×10^{-7} centimeters per second (cm/sec).

(17) "Modification" means a change, replacement, or alteration of the water well.

(18) "Monitoring well" means a well constructed if the actual or intended use in whole or part is the removal of water for sampling, measuring, or test pumping for scientific, engineering, or regulatory purposes.

(19) "Natural person" means an individual person distinguished from a person as defined in KRS 224.01-010(17).

(20) "Pit" means a hole, shaft, or cavity in the ground.

(21)[~~(20)~~] "Pitless well adapter" means a device designed for attachment to one (1) or more openings through a well casing.

(22)[~~(21)~~] "Pitless well unit" means an assembly that extends from the upper end of the well casing to above the finished ground surface.

(23)[~~(22)~~] "Perched" means a region in the unsaturated zone separated from an underlying aquifer where the materials are[~~may be~~] locally saturated because they overlie a low-permeability unit.

(24)[~~(23)~~] "Potable water" means water that meets the provisions of 401 KAR Chapter 8, the quality of which is approved by the cabinet for human consumption.

(25)[~~(24)~~] "Sealing materials" means neat cement, cement-bentonite grout, or bentonite. Drill cuttings are not sealing materials.

(26)[~~(25)~~] "Static water level" means the level at which water stands in a well when water is not being taken from the aquifer either by pumping or by free flow.

(27)[~~(26)~~] "Unconsolidated formation" means a loose, nonlithified geological formation such as soil, sand, or gravel.

(28)[~~(27)~~] "Undesirable geologic formation" means a geologic formation with physical characteristics or water quality not conducive to the construction and use of a well.

(29)[~~(28)~~] "Undesirable groundwater" means groundwater not suitable for human or animal consumption, irrigation, manufacturing process water, or cooling.

(30) "Water supply well" means "water well" or "well" as defined by KRS 223.400(7).

(31)[~~(29)~~] "Water supply well" means[,] "water well"[,] or "well" as defined by KRS 223.400(7).

[~~(31) "Well development" means the act of repairing damage to the formation caused by drilling procedures and increasing the porosity and permeability of the materials surrounding the intake portion of the well.~~]

(32)[~~(30)~~] "Well unsuitable for its intended use" means a well:

(a) The use of which has been permanently discontinued;

(b) That is in such a state of disrepair that it cannot be used to supply groundwater;

(c) That presents a health or safety hazard;

(d) From which usable groundwater is not obtainable; or

(e) With boreholes that:

1. Are dry;

2. Have caved in; or

3. Are unsuitable for further development and well construction.

HENRY "HANK" LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: August 14, 2008
FILED WITH LRC: August 14, 2008 at 11 a.m.
CONTACT PERSON: Abigail Powell, Regulations Coordinator Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 9, 2008)

401 KAR 6:310. Water supply well construction practices and standards.

RELATES TO: KRS 223.400 – [~~through~~] 223.460, 223.991, 224.01-010, **224.01-400,** EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 151.110, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.[~~the commercial practice of water well drilling. These requirements are necessary to ensure that the completed well provides an appropriate quality of product to the consumer while protecting the ground water resources of the commonwealth. This administrative regulation fulfills the mandate of KRS 223.435 to promulgate administrative regulations establishing standards of practice for water well construction and of KRS 224.70-100 to protect water quality.~~]

Section 1. General Requirements. (1) Certified water supply well driller requirement. Each water supply well subject to this administrative regulation shall be constructed, modified, or aban-

doned only by natural persons certified to drill water supply wells in accordance with KRS 223.425 and 401 KAR 6:320.

(2) Construction and well performance requirement. Permanent and temporary water supply wells shall be constructed, modified, and abandoned in such a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(3) Reporting requirement. Within sixty (60) days after a water supply well has been completed, modified, or abandoned the certified well driller shall submit a report of well construction, modification, or abandonment to the cabinet using the Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record, as appropriate.

(a) All information about the depth and the materials used in the water supply well construction, modification, or abandonment shall also be recorded.

(b)[~~The report shall be submitted on the Uniform Kentucky Well Construction Record.~~

~~(c)~~] The certified water supply well driller shall complete the bacteriological section on the Uniform Kentucky Well Construction Record to report the results of the coliform sampling as required in Section 9(6)[9] of this administrative regulation. The certified driller shall retain the results of the bacteriological sample analysis.

(4) Records to water supply well owner. Within sixty (60) days after the water supply well has been completed or modified, the certified well driller shall provide the following material to the well owner:

(a) A copy of the Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record, as appropriate;

(b) A copy of the results of bacteriological sample analysis collected in accordance with Section 9(6)[9] of this administrative regulation;

(c) Water Well Owner's Guide; and

(d) A copy of analytical results if additional water quality analysis is conducted.

(5) The certified well driller shall tag each well constructed or modified with a well identification number tag provided by the cabinet.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the certified driller shall tag the well, as appropriate, and include the well identification number assigned on[~~in~~] the Uniform Kentucky Well Maintenance and Plugging Record.

(6) Variances. If conditions exist or are believed to exist that preclude compliance with the requirements of this administrative regulation, the certified[~~water supply~~] well driller may request a variance prior to well construction, modification, or abandonment. The variance request shall be submitted to the cabinet on the[~~form~~] Kentucky Water Well Variance Request form.

(a) The variance request shall include the following:

1. A thorough description of the land use at the site and adjacent properties[~~land~~];

2. Distance between the proposed well location and existing water supply wells and monitoring wells on adjacent properties;

3. The distance between the proposed well location and potential pollution sources, both on site and on adjacent properties, including septic systems, sewers, and petroleum and chemical storage tanks;

4. A description of the geologic conditions at the site, including soil thickness, type of bedrock, perched water, confining zones, and the depth to groundwater[~~water; and~~]

5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;

6. A justification for the variance; and

7. The proposed well construction procedures to be used in lieu of compliance with this administrative regulation and an explanation as to how the alternate well construction procedures ensure the protection of the quality of the groundwater and the protection of[~~that will ensure the protection of groundwater quality and~~] public health and safety.

(b) Written variance procedure. The driller shall request a variance and obtain cabinet approval before well construction begins.

1. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.

2. The cabinet shall notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance.

3. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

(c) Verbal variance for an emergency.

1. A driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure in paragraph (b) of this subsection may result in:

a. Loss of access to potable water for the intended user;

b. Failure to address an existing or impending environmental emergency in accordance with KRS 224.01-400; or

c. A risk to public health or safety.

2. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the water well driller shall submit to Kentucky Water Well Variance Request form, signed by the certified driller and well owner, to the cabinet.

(d) The variance approval shall list the conditions of the variance, including:

1. The approved alternate well construction procedures;

2. The well sampling requirements; and

3. The requirement to notify surrounding property and well owners of the variance, if applicable.

(e) [~~The certified well driller may request a verbal approval for a variance, provided that the variance request shall be submitted to the cabinet on the Kentucky Water Well Variance Request within fifteen (15) days of the date of the verbal variance is approved.~~

~~(c)1. The cabinet shall notify the applicant in writing within ten (10) days of its decision either to grant or deny the variance.~~

~~2. The cabinet shall issue the variance approval by letter.~~

~~3. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.~~

~~(d)~~] The certified well driller shall submit a copy of the Kentucky Water Well Variance Request form, signed by the certified driller and the well owner,[~~variance letter of approval along with the Uniform Kentucky Well Construction Record~~] to the cabinet within sixty (60) days after the[~~a variance~~] well is [~~has been~~] completed.

(f)[~~(e)~~]1. After a variance is issued regarding the location of a well with respect to various pollution sources in Section 5(1) of this administrative regulation, the certified well driller for which a variance has been issued shall collect water samples from the well and have these samples analyzed for the parameters as specified in the Kentucky Water Well Variance Request approval letter.

2. The certified well driller shall submit a copy of the analytical results to the well owner and the cabinet within ten (10) days of the receipt of the analytical results from the laboratory.

Section 2. Construction Materials and Requirements. (1) All materials to be used for the construction, modification, or abandonment of water supply wells shall be approved for use in water wells by one (1) or more of the following:

(a) National Sanitation Foundation (NSF);

(b) American Society for Testing and Materials (ASTM); or

(c) American Petroleum Institute.

(2) Permanent well casing and liners.

(a) Well casing and liners shall be able to withstand the physical forces acting upon them during and following their installation and during their use. This includes forces due to suspension in the borehole, grouting, development, purging, pumping, sampling, and forces exerted on the well casing and liners by the surrounding geologic materials.

(b) Steel or PVC well casing and liners shall have a minimum inside diameter of four (4) inches, except for driven point wells and jetted wells which are addressed in Section 8(3) of this administra-

tive regulation.

(c) The certified well driller shall install well casing and liners in accordance with manufacturer specifications.

(d) The certified well driller shall not install used, damaged, or contaminated well casing or liner pipe.

(e) Steel well casing and liners.

1. Steel well casing and liners shall meet or exceed the minimum standards provided in Table A of this administrative regulation.

Table A: Casing and Liner Pipe Weights and Dimensions			
Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot)
[~~1~~	~~1.315~~	~~0.120~~	~~-~~
~~1 1/4~~	~~1.660~~	~~0.120~~	~~-~~
~~1 1/2~~	~~1.900~~	~~0.120~~	~~-~~
~~2~~	~~2.375~~	~~0.120~~	~~2.89~~
~~2 1/2~~	~~2.875~~	~~0.120~~	~~3.53~~
~~3~~	~~3.500~~	~~0.120~~	~~4.33~~
~~3 1/2~~	~~4.000~~	~~0.120~~	~~4.97~~]
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92
8	8.625	0.277	24.70
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

2. Joints and couplings shall be welded or threaded.

3. Joints shall be watertight.

(f) PVC well casing and liners.

1. PVC well casing and liners shall:

a. Meet or exceed the minimum standards provided in Table B of this administrative regulation;

Table B: PVC Casing and Liner Pipe Specifications			
Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

b. Have minimum Standard Dimension Ratio (SDR) 26;

c. Have a minimum Impact Classification of IC-1;

d. Meet or exceed American Society for Testing and Materials (ASTM) Specification D1784-07 or F480-066 found in American Society for Testing and Materials (A.S.T.M.) Specification D1784-07, Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and American Society for Testing and Materials (A.S.T.M.) Specification F480-06b, Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;

e. Meet or exceed the National Sanitation Foundation (NSF) Standard 14 for potable water applications found in National Sanitation Foundation (N.S.F.) Standard 14, Plastics Piping System Components and Related Materials; and

f. Meet or exceed the NSF Standard 61 found in National Sanitation Foundation (N.S.F.) Standard 61, Drinking Water System Components Health Effects.

2. Joints and couplings shall be welded, cemented, or threaded.

3. Joints shall be watertight.

4. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.

(3)(a) Temporary outer casing. Temporary outer casing used during well construction shall be sufficiently strong to permit installation without distorting or rupturing, and shall be removed upon well completion.

(b) If the driller determines that temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

(4) Well screens.

(a)1. Well screens shall be capable of withstanding the stress to which the pipe will be subjected and the corrosiveness of the water with which it comes in contact.

2. Used, damaged, or contaminated well screens shall not be installed.

(b) Steel or PVC well screens with a minimum inside diameter of four (4) inches shall be installed, except for bored, driven, or jetted wells.

(c) Well screens shall be installed in accordance with the manufacturer's specifications.

(d) Wells screens shall be centered in the borehole.

(e) Steel screens. Joints and couplings shall be welded or threaded.

(f) PVC screens shall:

1. Have minimum Standard Dimension Ratio (SDR) 26;

2. Have a minimum Impact Classification of IC-1;

3. Meet or exceed ASTM Specification D1784-07 or F480-066 found in American Society for Testing and Materials (A.S.T.M.) Specification D1784-07, Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and American Society for Testing and Materials (A.S.T.M.) Specification F480-06b, Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;

4. Meet or exceed the NSF Standard 14 for potable water applications found in National Sanitation Foundation (N.S.F.) Standard 14, Plastics Piping System Components and Related Materials and rated potable water (PW) or well casing (WC); and

5. Joints and couplings shall be welded, cemented, or threaded.

(g) Screen slot size shall be selected to prevent the entry of sediment or other harmful material into the well.

(5) Air rotary drilling. Water shall be injected into the air stream at a rate sufficient to eliminate dust and to keep the borehole clean of cuttings.

(6) Mud rotary drilling method. Pits to contain or re-circulate drilling fluids shall be constructed in a manner as to isolate the drilling fluid from runoff to a stream or other waterway.

(7) Lead. Materials containing lead shall not be used in the construction of a water supply well.

Section 3. Sealing Materials. (1) Mixing. Sealing materials and additives that control or affect setting times or physical properties of the sealing materials shall be mixed in accordance with the manufacturer's specifications.

(2) Application. Grouting shall be performed using the grout-pipe method or a pressure grouting device to add the sealing materials and other materials used to seal the annulus from the bottom of the annulus upward in one (1) continuous operation until the annulus is filled to two (2) feet below the surface or to the point of pitless adapter attachment. If temporary or permanent outer casing is used, sealing materials may be added[~~to~~] prior to installing the inner casing.

(a) Cement and concrete grout. The appropriate type of neat cement and concrete grout for the conditions present in the well shall be used in accordance with the manufacturer's guidelines.

(b) Neat cement-bentonite grout. Neat cement-bentonite grout shall set for a minimum of seventy two (72) hours prior to resuming drilling operations.

(c)1. Bentonite grout. Bentonite grout shall set until the slurry has hydrated according to the manufacturer's specifications.

2. Bentonite grout shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(d) Reduced setting time. Setting time may be reduced with additives if used in accordance with the manufacturer's specifications.

(e) Bentonite in pellet, chip, or granular form. If bentonite pel-

lets, chips, or granules are placed above the water table, the certified driller shall comply with the following:

1. Dry bentonite pellets, chips, or granules shall be placed in increments not greater than[~~of a maximum of~~] two (2) feet in thickness to provide proper hydration and prevent bridging;

2. Each increment shall be hydrated prior to the continued placement of dry bentonite pellets, chips, or granules; and

3. Bentonite pellets, chips, or granules shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(f) Construction water. Water used in the drilling or decontamination process shall be potable.

(g)1. Drill cuttings. The certified well driller may use clay, shale, or limestone drill cuttings if cuttings are allowed to seal portions of the annulus.

2. Sandstone cuttings shall not be used.

Section 4. Design Factors. Each well shall be constructed to include the following: (1) Natural protection. The well shall be located to protect groundwater quality and public health and safety.

(2) Geologic formations.

(a) The well construction shall be adapted to the local or site-specific geologic formations and groundwater conditions.

(b) Undesirable groundwater shall be cased off or otherwise prevented from contributing to a well.

(3) Capacity. The well shall be constructed to optimize yield while maintaining the safe functioning and integrity of the aquifer.

(4) Pitless well adapters.

(a) A well casing shall not be cut off or cut into below finished ground surface except by a certified water supply well driller to install a pitless well adapter, a pitless well unit, or to make modifications.

(b) Construction or installation of pitless well adapters or pitless well units shall be done in such a manner as to provide a leak-proof seal. If a frost-free hydrant is installed, a Dual Check Valve Backflow Preventer that meets the specifications of American Society of Sanitary Engineering (A.S.S.E.) 1024 Performance Requirements for Dual Check Backflow Preventers shall be installed between the pitless adapter and the frost-free hydrant.

(5) Accessibility. The well shall be constructed to allow access for repairs, maintenance, treatment, and inspection.

Section 5. Setback requirements. (1) Wells shall be installed in accordance with the minimum lateral distances between the well and potential pollution sources in Table C of this administrative regulation.

Table C: Setback Requirements	
Lateral Sources of Contamination	Minimum Distances
Leaching Pit	100 Feet
Petroleum Storage Tank	100 Feet
Grave or Cemetery	75 Feet
Manure Pile, Animal Waste Storage, or Confined Animal Feeding Operation	75 Feet
Wastewater Treatment Disposal System	75 Feet
Side Wall of Lateral Trench, Bed, or Lagoon	70 Feet
Geothermal – Closed Loop, Ungrouted	70 Feet
Water Supply Well	50 Feet
Septic Tank or Sewer Line	50 Feet
Livestock Pen, Corral, or Stable	50 Feet
Surface Water Body	25 Feet
Geothermal – Closed Loop, Grouted; Abandoned Water Well Grouted	20 Feet
Property Lines, Utility Lines, or Roadway Right of Way	10 Feet

(2) The certified well driller shall evaluate land-use activities, both on the property on which the well is to be located and on adjacent properties, and identify other potential pollution sources not listed subsection (1) of this section.

(3) If the unconsolidated material is less than twenty (20) feet thick and composed of predominantly sand or gravel, the minimum lateral distances in subsection (1) of this section shall be doubled.

(4) Wells may be constructed in flood zones if an alternate site does not exist[~~exists~~].

(5) The certified well driller shall terminate the casing a minimum of two (2) feet above the maximum known flood elevation, or any known conditions of flooding by drainage or run-off from the surrounding land.

(6) Buildings. The well extended vertically shall clear a projection from a building by a minimum of five (5) feet.

(7) Pits and basements. Wells shall not be constructed in pits or basements.

Section 6. Wells Drilled into Consolidated Formations Using the Cable Tool, Air Rotary, Mud Rotary, Reverse Rotary, or Sonic Methods. (1) Borehole construction.

(a) The diameter of the borehole shall be a minimum of 1.75 inches greater than the outer diameter of the casing.

(b) Steel casing may be driven or advanced through unconsolidated material without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) The borehole diameter of the open-hole portion of the well shall be smaller than the inside diameter of the lowermost permanent casing in order that the permanent casing can rest on the shoulder of the open borehole[~~bore hole~~] and in order that the lower portion of the permanent casing can be properly sealed.

(d) Plumbness and alignment. The borehole shall be sufficiently plumb and straight to receive well casing, liner, and screen without binding and shall not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Casing shall extend below the surface a minimum of twenty (20) feet.

(b) Single-cased wells.

1. Unconsolidated material thirty (30) feet thick or less. If unconsolidated material is thirty (30) feet thick or less, the certified well driller shall install casing extending a minimum of ten (10) feet into bedrock.

2. Unconsolidated material greater than thirty (30) feet thick. If unconsolidated material is greater than thirty (30) feet thick, the certified well driller shall install casing extending a minimum of two (2) feet into bedrock.

3. Fractures, crevices, voids, and undesirable geologic formations. Permanent casing shall be installed a minimum of two (2) feet below any fractures, crevices, voids, or undesirable geologic formations that may introduce harmful materials, pollutants, or undesirable groundwater to the well.

4. The certified driller shall case off undesirable water-bearing formations, leaving a minimum of two (2) feet below the bottom of the production zone.

(c) Multiple-cased wells.

1.a. Temporary outer casing. The inside diameter of temporary outer casing shall be a minimum of two (2) inches greater than the outside diameter of the inner casing.

b. Temporary outer casing shall be removed prior to well completion.

c. If the driller determines that temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

2. Permanent outer casing. The inside diameter of permanent outer casing shall be a minimum of two (2) inches greater than the outside diameter of the inner casing.

3. Inner casing. The certified well driller shall install permanent inner casing in accordance with the requirements of subsection (2)(b) of this section.

(3) Screen and liner installation.

(a) If a screen or liner is installed, screen or liner slot size shall be selected to prevent the entry of fine-grained sediment and other anticipated harmful material into the well.

(b) Screens and liners shall conform to the requirements of Section 2 of this administrative regulation.

(4) Filter pack. If an artificial filter pack is installed, the filter

pack shall meet the following criteria:

(a) Filter pack material size shall work in conjunction with the well screen to prevent the entry of fine material and sediment into the well;

(b) Filter pack material shall be disinfected prior to placement in the well or shall be disinfected in the well;

(c) The filter pack shall extend a minimum of two (2) feet above the screen [~~and shall not extend to within twenty (20) feet of finished ground surface~~]; and

(d) Filter pack refill pipes may be installed if refill pipes terminate above finished ground surface, are provided with a watertight cap, and are sealed in the annulus.

(5) Annular seal.

(a) The certified well driller shall seal the annulus in a manner that prevents the migration of pollutants through the annulus. The certified well driller shall seal the annulus by one (1) of the following methods:

1. Sealing the entire annulus with sealing materials;

2. Sealing a minimum of the bottom two (2) feet of the annulus between the borehole[~~bore hole~~] and the permanent casing and sealing the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials; or

3. The methods in subparagraphs 1 or 2 of this paragraph used in combination with a mechanical packer.

(b) Single-cased wells.

1. Open-hole construction. The certified well driller shall seal the bottom two (2) feet of the annulus with sealing materials and shall seal the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials.

2. Screened construction. The certified well driller shall seal the bottom two (2) feet above the filter pack with sealing materials and shall seal the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials.

(c) Multiple-cased wells.

1. Temporary outer casing.

a. The certified well driller shall seal the annulus below the temporary outer casing prior to removal of the temporary outer casing.

b. The certified well driller shall seal the remainder of the annulus in the zone where temporary outer casing was used upon removal of the temporary outer casing.

2. Permanent outer casing.[~~a.~~] The certified well driller shall seal the annulus between the borehole[~~bore hole~~] and permanent outer casing at the installation of the permanent outer casing. The certified well driller shall seal the bottom two (2) feet of the annulus between the bore hole and the permanent outer casing with sealing materials and shall seal the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials.

3.[~~b.~~] Inner casing. The certified well driller shall seal the entire annulus around the inner casing, including the annulus between the outer and inner casing. The certified well driller shall seal the bottom two (2) feet of the annulus between the outer casing and the inner casing with sealing materials and shall seal the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 7. Wells Drilled in Unconsolidated Formations. (1) Borehole construction.

(a) The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing and screen; or

(b) Steel casing may be driven or advanced without overdrilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) Plumbness and alignment. The borehole shall be sufficiently plumb and straight to receive well casing, liner, and screen without binding and shall not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Single-cased wells. A minimum of twenty (20) feet of permanent casing shall be installed below finished ground surface excluding the screened interval.

(b) Multiple-cased wells.

1. Temporary outer casing.

a. The inside diameter of temporary outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

b. Temporary outer casing shall be removed prior to well completion.

2. Permanent outer casing. The inside diameter of permanent outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

3. Inner casing. A minimum of twenty (20) feet of permanent inner casing shall be installed below finished ground surface excluding the screened interval.

(3) Screen installation. Screen slot size shall be selected to prevent the entry of fine sediment or other harmful material into the well.

(4) Filter pack. The natural formation may be developed to serve as a filter pack, or an artificial filter pack shall be installed. The artificial filter pack shall meet the following criteria:

(a) Filter pack material shall be sized to prevent the entry of fine sediment or other harmful material into the well;

(b) Filter pack material shall be disinfected prior to placement in the well, or disinfected in place;

(c)[~~1.~~] The filter pack shall extend a minimum of two (2) feet above the screen; and

[~~2. The filter pack shall not extend to within twenty (20) feet of finished ground surface; and~~]

(d) Filter pack refill pipes may be installed if they terminate above finished ground surface, are provided with a watertight cap, and are sealed in the annulus.

(5) Annular seal.

(a) The annulus shall be sealed in a manner that prevents the migration of groundwater and pollutants through the annulus. The certified well driller shall seal the annulus by one (1) of the following methods:

1. Sealing the entire annulus with sealing materials;

2. Sealing the two (2) feet of annulus directly above the filter pack with sealing materials and sealing the remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials; or

3. Using the method outlined above in combination with a mechanical packer.

(b) Single-cased wells.

1. The certified well driller shall seal the annulus using one (1) of the following methods:

a. Sealing the entire annulus with sealing materials; or

b. Sealing the two (2) feet of annulus directly above the filter pack with sealing materials and sealing the remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials.

2. The annular seal shall extend to a minimum depth of eighteen (18) feet below finished ground surface.

(c) Multiple-cased wells.

1. Temporary outer casing. The certified well driller shall seal the bottom two (2) feet of the annulus above the filter pack with sealing materials and the remainder of the annulus below the temporary outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials prior to removal of the temporary outer casing.

2. Permanent outer casing. The certified well driller shall seal the bottom two (2) feet of the annulus between the borehole and permanent outer casing above the filter pack with sealing materials and the remainder of the annulus between the borehole and permanent outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials at the installation of the permanent outer casing.

3. Inner casing. The certified well driller shall seal the bottom two (2) feet of the annulus between the inner casing and outer casing with sealing materials and the remainder of the annulus between the inner casing and outer casing shall be sealed with drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 8. Special Well Types. Wells in this classification shall include bored, driven, and radial collector wells.[~~Bored wells shall be constructed using the concrete-collar or the buried-slab method.~~]

(1) Bored well construction. Bored wells shall be constructed using the concrete-collar or the buried-slab method.

(a) Borehole diameter. The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing or precast concrete tiles used below the buried-slab or concrete-collar method.

(b) Casing materials. Casing materials for bored wells shall consist of pre-cast concrete tiles or corrugated fiberglass casing that meet the material construction standards set out in Section 2 of this administrative regulation.

(c) Filter pack. The natural formation may serve as a filter pack, or an artificial filter pack may be installed in the annulus below the buried slab. The filter pack shall meet the following criteria:

1. The artificial filter pack material shall be sized to prevent the entry of fine-grained sediment and other material into the well, and shall be free from clay, silt, or other deleterious material;[~~.~~]

2. Artificial filter pack material shall be disinfected prior to placement in the well;[~~.~~]

3. The filter pack shall not extend above the buried slab or concrete collar; and[~~.~~]

4. Filter pack refill pipes may be installed if they terminate above finished ground surface, are provided with a watertight cap, and are sealed in the annulus.

(d) Bored well construction using the buried-slab method.

1. The buried slab shall be a minimum of ten (10) feet below ground surface.

2. The slab shall consist of reinforced concrete constructed without joints.

3. The buried slab shall have a diameter sufficient to extend to the outer edge of the casing or tiles installed below the buried slab.

4. The top of the buried slab shall slope away from the center and shall provide a watertight joint where the buried slab rests on the well casing.

5. A coupling shall be cast in the buried slab in which to install the upper well casing.

6. The joint between the well casing and coupling shall be water tight.

7. Bentonite seal.

a. The certified well driller shall install a bentonite seal above the buried slab that extends the entire diameter of the borehole.

b. The bentonite seal shall be a minimum of twelve (12) inches thick.

8. Upper well casing.

a. The certified well driller shall install well casing above the buried slab to extend a minimum of eight (8) inches above the ground surface.

b. The inside diameter of the casing shall be a minimum of four (4) inches.

c. The upper casing shall conform to the requirements of Section 2 of this administrative regulation and shall have only threaded or welded joints.

9. Pitless adapter. If a pitless adapter is installed, installation of the pitless adapters shall be done in such a manner as to provide a leak-proof seal. If a frost-free hydrant is installed, a Dual Check Valve Backflow Preventer that meets the specifications of American Society of Sanitary Engineering (A.S.S.E.) 1024 Performance Requirements for Dual Check Backflow Preventers shall be installed between the pitless adapter and the frost-free hydrant.

10. The annulus fill for the upper casing above the bentonite seal shall consist of sealing materials or clean, inert earth materials.

11. The certified well driller shall install a water-tight well cap at the top of casing.

(e) Bored well construction with concrete-collar method.

1. The upper ten (10) feet of the borehole diameter shall be a minimum of six (6) inches greater than the outside diameter of the well casing.

2. The annular space in the upper ten (10) feet of the borehole[~~bore-hole~~] between the excavation and the installed concrete collar casing shall be sealed with concrete or sealing materials.

3. The diameter of the borehole below the grouting shall be a minimum of four (4) inches greater than the outside diameter of the well casing.

4. The casing shall extend a minimum of eight (8) inches above the finished ground surface.

5. The cover slab shall be a minimum of four (4) inches thick.

6. A pipe sleeve shall be cast in place in the slab to accommodate the type of pump or pump piping to be used for the well.

7. A watertight joint shall be made where the slab rests on the well casing.

(2) Dry-driven grout method.

(a) General.

1. Steel casing may be driven using the dry-driven grout method.

2. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.

(b) Pilot hole. A pilot hole shall be constructed a minimum of three (3) feet deep and a minimum of six (6) inches larger in diameter than the outside diameter of the casing to be driven.

(c) Casing installation.

1. Dry bentonite granules not smaller than fifty (50) mesh and not larger than eight (8) mesh shall be poured into the pilot hole prior to driving the casing.

2. Bentonite shall continue to be poured into the pilot hole as the casing is driven and bentonite is drawn into the annulus.

(3) Driven point wells and jetted wells. Driven point wells and jetted wells shall be used for temporary dewatering purposes only.

(a) The well point, drive pipe, and joints shall be structurally suitable to prevent rupture or distortion during driving.

(b) Driven point wells and jetted wells shall not supply water for human consumption.

(c) Driven point wells shall have a water-tight cap.

(d) Driven point wells and jetted wells shall be abandoned in accordance with Section 11 of this administrative regulation.

(4) Radial collector wells.

(a) The certified well driller shall submit plans for a proposed radial collector well to the cabinet and receive written approval prior to construction of a radial collector well.

(b) Factors that shall be considered for approval of a radial collector well include:

1. Depth of the well;

2. Types of formations;

3. The location of the well;

4. Sources of potential contamination in the area surrounding the well;

5. Intended use of the well; and

6. Planned or approved treatment schemes, if applicable.

Section 9. Well Finishing, Disinfection, and Testing. (1) Upper terminal. Upon well completion, the certified driller shall comply with the following:

(a) The certified well driller shall terminate the casing a minimum of four (4) inches above finished ground surface and shall slope the ground surface away from the well.

(b) Flood zones. The certified well driller shall terminate the casing a minimum of two (2) feet above the maximum known flood elevation.

(2) Well development. Newly installed water supply wells shall be developed until the column of water in the well is free of visible sediment[~~The certified well driller shall develop the well to remove all drill cuttings and to allow free entry of formation water~~].

(3) Disinfection. Wells shall be disinfected in accordance with the following procedures:

(a) Determine the feet of water in the well by subtracting the static water level from the total depth of the well;

(b) Determine the amount of chlorine disinfectant to use in order to provide a minimum chlorine concentration of 100 parts per million (ppm) in the well;

1. For a four (4) inch-diameter well, the certified well driller shall use a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per 150 feet of water in the well.

2. For a six (6) inch-diameter well, the certified well driller shall use a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per seventy-five (75) feet of water

in the well.

3. For an eight (8) inch-diameter well, the certified well driller shall use a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per fifty (50) feet of water in the well.

4. For a twenty-four (24) inch-diameter well, the certified well driller shall use a minimum of eight (8) cups of chlorine bleach or five (5) ounces of hypochlorite granules per ten (10) feet of water in the well; and[.]

(c) Chlorine disinfection procedure.

1. Introduce the chlorine or hypochlorite granules into the well.[;]

2. Circulate the chlorine solution throughout the well for a minimum of thirty (30) minutes, ensuring that the chlorinated water contacts all parts of the well casing, borehole, discharge pipes, and all internal well components.[;]

3. Allow chlorinated water to stand in the well for a minimum of thirty (30) minutes.[;]

4. After the chlorinated water solution has stood in the well for a minimum of thirty (30) minutes, purge the well of all chlorinated water. Chlorinated water shall be discharged to the ground and shall not be discharged to a surface water body.

(4) Well cap.

(a) The certified well driller shall install a well cap or sanitary seal.

(b) The well cap shall be watertight.

(5) Vents. A vent shall consist of a pipe extending above the top of the well and above known flood elevations, with the open end turned down, and the open end shall be covered with twenty-four (24) mesh or finer screen of durable material. For wells with naturally occurring methane, a vent shall be installed.

(6) [~~Well label. The certified well driller shall label the well with a Kentucky well label.~~

~~(7)~~] Fecal coliform sampling.

(a) If the well is for potable use, the certified well driller shall have the well analyzed for fecal coliform bacteria within thirty (30) days of the completion of the well.

(b) The sample shall not be collected until all residual chlorine has been purged from the well.

(c) Samples for fecal coliform bacteria shall be delivered to the laboratory within six (6) hours of the time they are collected.

(d) Samples shall be kept at four (4) degrees centigrade (forty (40) degrees Fahrenheit); during that time samples shall not be frozen.

(e) Sample containers shall be sterile glass or plastic.

(f) Fecal coliform analysis shall be conducted at a laboratory certified in accordance with 401 KAR 8:040.

Section 10. Well Modification. (1) General. If a water supply well is modified, the certified driller shall bring the well construction into compliance with this administrative regulation.

(2) Well pits.

(a) A new well pit shall not be constructed, and a person shall not modify an existing well pit[~~existing well pits~~].

(b) The certified well driller modifying a well shall eliminate an existing well pit and shall extend the casing a minimum of four (4) inches above the finished ground surface.

(c) Flooring and the walls of the pit shall be broken and removed, and the pit shall be filled with compacted earth.

(3) Finishing and testing. The certified well driller shall finish the well and have the well tested for fecal coliform bacteria in accordance with Section 9(6)[~~9(7)~~] of this administrative regulation.

(4) Reporting requirement. Within sixty (60) days of modification of a well, the certified well driller shall submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner and the cabinet in accordance with Section 1(3) and Section 1(4) of this administrative regulation.

Section 11. Well Abandonment. (1) Well unsuitable for its intended use. A water supply well that[~~which~~] has been damaged, or is otherwise unsuitable for use as a water supply well, shall be abandoned within thirty (30) days from the date it is determined that the well is no longer suitable for its intended use.

(a) Water supply wells shall be abandoned in such a manner as to prevent the migration of surface water or contaminants to the subsurface and to prevent migration of contaminants among water bearing zones.

(b) A record of the abandonment of a water supply well shall be submitted by the certified driller on the Uniform Kentucky Well Maintenance and Plugging Record to the water well drillers program within sixty (60) days from the date abandoned.

(2) Well preparation for abandonment.

(a) Measurements. Prior to abandoning a water supply well, the certified driller shall:

1. Measure the well depth;

2. Measure the well diameter;

3. Measure the depth to static water level; and

4. Record the information in subparagraphs 1 through 3 of this paragraph on the Uniform Kentucky Well Maintenance and Plugging Record[~~measure the well depth and depth to static water level~~].

(b) Obstructions.

1. All obstructions shall be removed from the well prior to abandoning; or

2. If the pump or equipment is stuck in the well and cannot be removed, the certified driller shall push the material to the bottom of the well, as possible.

(c) Disinfection. The certified well driller shall disinfect the well in accordance with Section 9(3) of this administrative regulation.

(3) Drilled wells.

(a) Well casing, screen, and liner removal.

1.a. All well casing, screens, and liners shall be removed from the well prior to placing the sealing material by pulling or overdrilling.

b. Well casing, screens, and liners may be removed simultaneously with the introduction of sealing material if necessary to avoid borehole collapse.

2.a. If the well casing has been grouted in place and the driller is unable to remove the casing, the certified well driller may cut off the casing a minimum of five (5) feet below the ground surface.

b. The driller shall fill the well with sealing materials or inert earth materials from the bottom of the well to a minimum of twenty (20) feet below the ground surface.

c. The certified well driller shall fill the remainder of the well with sealing materials to a minimum of five (5) feet below the ground surface.

d. The uppermost five (5) feet of the well shall be filled with sealing materials or other inert earth material suitable to land use at the site.

(b) Sealing material placement.

1.a. The certified well driller shall fill[~~abandon~~] the well or borehole with sealing materials or other inert materials from the bottom to a minimum of twenty (20) feet below the ground surface.

b. Filling the well or borehole with sealing materials or inert material shall be done in a manner so that all voids are completely filled and in a manner that prevents bridging across the well or well bore.

2. The certified well driller shall fill the well or borehole with sealing materials from a minimum of twenty (20) feet below ground surface to a minimum of five (5) feet below the ground surface, in a manner that prevents the migration of pollutants along the well or well bore.

3. The certified well driller shall use sealing materials, clay, or other inert material suitable to the proposed land use to fill the upper five (5) feet or less of a well being abandoned.

(4) Wells with multiple casing. The certified well driller shall remove the innermost well casing, screen, or liner first and fill the well up to the level of the bottom of the next outer casing before removing the next outer casing.

(a) Voids. The certified well driller shall fill the well or borehole with sealing materials or other inert materials from the bottom of the well to a minimum of five (5) feet below the bottom of a void.

1. A packer, expansion bridge, or other support shall be placed at the top of the void.

2. A permanent bridge consisting of a minimum of ten (10) feet of sealing materials shall be placed above the expansion bridge.

(b) The certified well driller shall fill the remainder of the well or borehole with sealing materials or other inert materials from the

bottom to a minimum of twenty (20) feet below the ground surface. The certified well driller shall fill the well or borehole[~~bore hole~~] with sealing materials from a maximum of twenty (20) feet below the ground surface to a minimum of five (5) feet below the ground surface.

(c) The certified well driller shall use sealing materials, clay, or other inert material suitable to the proposed land use to fill the upper five (5) feet or less of a well being abandoned.

(5) Bored and hand dug wells.

(a) The certified well driller shall fill the well with sealing materials, dense grade aggregate, limestone sand, or native clay from the bottom of the well to a maximum of five (5) feet below finished ground surface.

(b) The certified well driller shall remove the upper five (five) feet of well casing, tiles, or other well-wall material and fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land.

(6) Driven wells.

(a) The certified well driller shall remove well casing and screens, and sealing materials shall be introduced simultaneously from the bottom of the well to a maximum of five (5) feet below finished ground surface.

(b) The certified well driller shall use sealing materials, clay, or other inert material suitable to the proposed land use to fill the upper five (5) feet or less of a well being abandoned.

(7) Flowing artesian wells.

(a) The certified well driller shall plug flowing artesian wells or wells in which there is upward movement of water between aquifers with neat cement grout that is pumped under pressure and mixed with the minimum quantity of water that will permit handling.

(b) The driller may restrict artesian flow if necessary.[~~The driller shall restrict flow by placing gravel or stone aggregate not more than one-third (1/3) of the diameter of the borehole through the water-bearing horizon, if its extent is known.~~]

(c) The certified well driller shall place a well packer, cast-iron plug, or temporary bridge at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow.

(8) Reporting requirement. Within sixty (60) days after a water well has been abandoned, the certified well driller shall complete and submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner, if known, and to the cabinet.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Kentucky Well Construction Record", April 2008;

(b) "Water Well Owner's Guide", July[~~April~~] 2008;

(c) "Kentucky Water Well Variance Request", July[~~April~~] 2008;

(d) "Uniform Kentucky Well Maintenance and Plugging Record", April 2008;

(e) American Society for Testing and Materials (A.S.T.M.) Specification D1784-07, "Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds", November 2007;

(f) American Society for Testing and Materials (A.S.T.M.) Specification F480-06b, "Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80", August 2006;

(g) National Sanitation Foundation (N.S.F.) Standard 14, "Plastics Piping System Components and Related Materials", March 2007;

(h) National Sanitation Foundation (N.S.F.) Standard 61, "Drinking Water System Components Health Effects", May 2008[~~July 2007~~]; and

(i) American Society of Sanitary Engineering (A.S.S.E.) 1024, "Performance Requirements for Dual Check Backflow Preventers", 2004.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The material in subsection (1)(a) through (d) of this section may also be obtained from the Division of Water Web site, www.water.ky.gov.

[~~Definitions. The terms used in 401 KAR 6:320 and this administrative regulation shall have the meanings given in KRS 223.400, 224.005, or in this section:~~

~~(1) "Abandoned" means a well unsuitable for its intended use that has been sealed or plugged to prevent entry of surface water and to prevent mixing of water from different aquifers.~~

~~(2) "Annular space" means the opening between a well bore or excavation and the well casing or between a casing pipe and a liner pipe.~~

~~(3) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.~~

~~(4) "Bedrock" means any solid rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.~~

~~(5) "Consolidated formation" means a geological formation which is bedrock.~~

~~(6) "Construction" means all acts necessary for obtaining ground water by wells, including drilling or excavation of the well and installation or modification of casing, but excluding the installation of permanent pumps and pumping equipment.~~

~~(7) "Driller" means water well driller as defined in KRS 223.400.~~

~~(8) "Established ground surface" means the elevation of the ground surface at the site of the well.~~

~~(9) "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well.~~

~~(10) "Impervious" means any material which will not permit the passage of water at a rate greater than 1 x 10-7 centimeters per second (cm/sec) (e.g., clay).~~

~~(11) "Modification" means any change, replacement, or other alteration of the water well. This includes, but is not limited to deepening of a well, replacing or repairing a casing, replacing or repairing a well screen, installing a pitless adapter and any other changes of a well structure. Bailing and pump replacement are not modifications.~~

~~(12) "Monitoring well" means a well constructed when the actual or intended use in whole or part is the removal of water for the purpose of sampling, measuring or test pumping for scientific, engineering or regulatory purposes.~~

~~(13) "Pitless well adapter" means a device designed for attachment to one (1) or more openings through a well casing. It shall be constructed so as to prevent the entrance of contaminants into the well through the opening, protect the water supply lines and plumbing from freezing and provide access to water system parts within the well.~~

~~(14) "Pitless well unit" means an assembly which extends the upper end of the well casing to above the finished ground surface. It shall be constructed so as to prevent the entrance of contaminants into the well, conduct water from the well, protect the water lines from freezing, and shall provide full access to the well and to water system parts within the well.~~

~~(15) "Pumping water level" means the elevation of the water surface in a well when water is discharged during pumping.~~

~~(16) "Rig operator" means any individual under supervision of a driller for whom an application has been submitted and who has been given a rig operator card from the cabinet and who may from time to time be in charge of well construction in the driller's absence.~~

~~(17) "Rig operator card" means an identification card provided to a rig operator by the cabinet after a certified driller has submitted an application requesting a card for the rig operator.~~

~~(18) "Static water level" means the level at which water stands in a well when no water is being taken from the aquifer either by pumping or by free flow.~~

~~(19) "Unconsolidated formation" means a geological formation such as sand or gravel, which has a tendency to cave in under natural conditions.~~

~~(20) "Well unsuitable for its intended use" means a well:~~

~~(a) The use of which has been permanently discontinued;~~

~~(b) Which is in such a state of disrepair that it cannot be used to supply groundwater;~~

~~(c) Which presents a health ha: rd;~~

~~(d) From which groundwater f useful purposes is not obtainable; or~~

~~(e) Bore-holes which:~~

~~1. Are dry;~~

~~2. Have caved in; or~~

~~3. Are unsuitable for further development and well construction.~~

~~Section 2. Scope. This administrative regulation provides minimum standards for location, construction and modification of water wells. No water well shall be constructed or modified contrary to the provisions contained in this administrative regulation. Sections 3 through 12 of this administrative regulation apply to water wells except monitoring wells. Section 13 of this administrative regulation applies to monitoring wells. Wells used solely for the purpose of recovery of pollutants shall not be included in this administrative regulation.~~

~~Section 3. General Requirements. (1) Certified driller required. All water wells subject to this administrative regulation shall be constructed only by persons having a valid certificate issued in accordance with KRS 223.400 through 223.460 and 401 KAR 6:320, or by persons under the supervision of certificate holders and having a rig operator card.~~

~~(2) Reports. Within thirty (30) days after a water well has been constructed or modified, the driller shall submit a report of construction to the cabinet. The report shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045).~~

~~(3) Variance.~~

~~(a) If conditions are believed to exist at a proposed installation site which preclude compliance with the requirements of this administrative regulation, the driller may request a variance by submitting to the cabinet a Kentucky Water Well Variance Request Form (DEP-6036) outlining a specific proposal to be used in lieu of compliance with this administrative regulation. The request shall include a thorough description of the site (lot size, the location of sewers, septic tanks, buildings, seepage fields, and other sources of contamination on the property and adjacent property with distances shown to the proposed well), the section number and brief summary of the provisions for which a variance is requested, and a complete justification as to why the variance is needed and how the alternate standard ensures the protection of the quality of the groundwater and the protection of public health and safety. The driller shall give special emphasis to ensuring the protection of the public's health and safety. The driller shall provide a description of site-specific geologic and soil conditions. The cabinet shall notify the applicant in writing within thirty (30) days of its decision either to grant or deny the variance based upon a determination by the cabinet that the proposed variance shall ensure the protection of the quality of the groundwater and protection of the public health and safety. The driller shall request a variance and shall obtain approval before well construction begins. In case of an emergency, where the delay incurred due to the above-described variance procedure would cause undue hardship or loss of life to the intended user, the driller may obtain an oral variance, provided the above-listed information is provided to the cabinet within fifteen (15) days of the date such oral variance is issued.~~

~~(b) After any variance is issued regarding the location of a well with respect to various contamination sources in Section 6 of this administrative regulation, the driller for which a variance has been issued shall take two (2) water samples from the well and have them analyzed for fecal coliform at a cabinet-approved laboratory. The cabinet may require analysis for other water quality parameters which may exist in conjunction with the source of potential pollution as necessary to protect the health or safety of potential users. At the time the variance is approved, the cabinet shall notify the driller as to what these parameters will be. One (1) sample shall be taken within thirty (30) days and the second sample shall be taken within sixty (60) days, but not less than thirty (30) days, after completion of the well.~~

~~(c) Examples of location problems which could preclude compliance with this administrative regulation would be where the proposed location of a well is too close to septic tanks, buildings, sewer lines, or barnyards as indicated in Table A.~~

~~(d) Examples of public health and engineering principles that may be considered in issuing a variance are ground surface conditions, depth of the water table, the location of sources of pollutants, the vulnerability of the aquifer to bacteria and other pollutants, and the geologic conditions at the site.~~

~~(4) Water sampling. All water samples shall be delivered to the laboratory within six (6) hours of the time they are taken and shall be kept at four (4) degrees centigrade (or forty (40) degrees Fahrenheit) during that time, but shall not be frozen. Containers for the water samples shall be sterile glass or plastic. However, drillers may obtain approval from the cabinet to perform fecal coliform analyses (except those required for variance approval) if they can demonstrate to the cabinet that they are capable of providing an accurate analysis.~~

~~(5) Display of certificate number. Drillers shall have their certificate numbers permanently affixed and prominently displayed on all drilling equipment used at construction sites. The certificate number shall be inscribed in the following manner: KY.CERT. XXXX-XXXX (insert certificate number in place of the X's). Numbers shall be at least three (3) inches in height and of a color that is easily distinguishable from that of the equipment. This number shall be removed if equipment is scrapped, sold, or otherwise changes ownership or if the driller's certificate becomes invalid.~~

~~(6) The documents listed in paragraphs (a) and (b) of this subsection are adopted and filed herein by reference. Copies of these documents may be obtained from the Environmental and Public Protection Cabinet, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410. The material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.~~

~~(a) Kentucky Water Well Record (DEP-4045) (September 15, 1987); and~~

~~(b) Kentucky Water Well Variance Request Form (DEP-6036) (January 1, 1991).~~

~~Section 4. Design Factors. The driller shall design each well to include the following:~~

~~(1) Natural protection. Location of the well shall include use of every natural protection available to promote sanitary conditions.~~

~~(2) Geological formations. The well construction shall be adapted to the local or site-specific geologic formations and ground water conditions.~~

~~(3) Undesirable geological formations. Water-bearing formations shall be prevented from contributing to a well by installing casing or a liner and properly sealing when such formations contain undesirable water or when the primary purpose for the well is to withdraw water from a deeper formation.~~

~~(4) Capacity. The well shall be constructed with the capacity to produce as much quantity of the desired water as the aquifer or aquifers can safely furnish.~~

~~(5) Durability. Construction methods and materials shall provide a durable well capable of maintaining safe water and protecting the aquifer over its useful lifetime and until the well is properly abandoned.~~

~~(6) Pitless well adapters. No well casing shall be cut off or cut into below ground surface except by a driller to install a pitless well adapter or pitless well unit. The well casing shall extend at least four (4) inches above established ground surface. If practicable, the well casing shall extend above any known conditions of flooding or run-off from the surrounding land after installation of a pitless well adapter or pitless well unit. Construction or installation of pitless well adapters or pitless well units shall be done in such a manner to provide a leak-proof seal.~~

~~Section 5. Location. (1) General. In establishing the location of a well, the driller shall consider sources of pollutants which exist on or adjacent to the premises where the well is to be located. As far as possible, the well shall be located on ground which is higher than sources of pollutants and shall have ready access for repairs, maintenance, treatment and inspection.~~

~~(2) Relation to sources of pollutants. In establishing minimum lateral distances to locate a well from potential sources of pollutants, the driller shall consider the character and location of the sources of pollutants, types of geologic formations present, depth to the aquifer, direction of ground water flow, effect on the ground water movement by well pumping and possibilities of flooding of the site by surface waters. Sources of pollutants such as streams, refuse disposal sites, excavations, waste treatment facilities, buried oil and gasoline storage tanks, improperly constructed wells and cisterns shall be evaluated and a distance determined based on~~

~~the pertinent facts.~~

~~(a) The minimum lateral distances shown in Table A shall apply for the sources of pollutants listed.~~

~~(b) When the upper formations are composed of materials with a permeability of 1 x 103 centimeters per second or greater, the lateral distances in Table A shall be doubled.~~

~~(3) Flood water. The construction of wells in locations subject to flooding shall be avoided. If no reasonable alternate site exists, wells may be constructed in flood zones only if water-tight construction is provided. If practicable, the casing of the well shall terminate not less than two (2) feet above the maximum known flood elevation.~~

~~(4) Relation to building. With respect to buildings, pits, and basements, the location of a well shall be as follows:~~

~~(a) Adjacent to building. When a well must be located adjacent to a building, it shall be so located that the center line of the well extended vertically will clear any projection from the building by not less than five (5) feet.~~

~~(b) Pits and basements. New wells shall not be constructed in pits or basements.~~

~~Section 6. Drilled Wells in Unconsolidated Formations. (1) General. In wells constructed in unconsolidated formations which extend the full depth of the well, including the screened area, the driller shall install a permanent casing, governed by the pumping level in the finished well. For pumping levels greater than twenty (20) feet below the ground surface, the driller shall install casing that extends five (5) feet below the pumping level. For pumping levels twenty (20) feet or less below the ground surface, the driller shall install casing that extends ten (10) feet below the pumping level. Under no conditions shall a driller install less than twenty (20) feet of permanent casing, excluding the screened interval. The driller shall fill the annular space between the casing and the drill hole. This may be accomplished by constructing an upper drill hole having a diameter four (4) inches greater than the inner diameter of the casing to be installed and extending to a depth of at least twenty (20) feet. The driller shall seal the upper drill hole with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry after the casing is in place. Cable-tool drilling may accomplish proper seal through dry bentonite application while driving casing.~~

~~(2) Gravel pack construction. When an oversized drill hole (i.e., more than four (4) inches greater than the inside diameter of the casing) is constructed to permit the placement of a gravel pack around the well screen, the driller shall seal the annular space between the casing and drill hole in the top twenty (20) feet or twenty (20) feet below the point of pitless adapter attachment with impervious drill cuttings, native clay, a neat cement-bentonite slurry or bentonite. If a permanent outer casing is installed, the driller shall extend the outer casing to a depth of at least twenty (20) feet and, depending on the formations present, seal the annular space between the drill hole and the outer casing with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry. The driller shall seal the annular space between inner and outer casings to prevent the entrance of pollutants from the surface.~~

~~(a) All gravel placed in the well shall be clean, washed and disinfected prior to placement or provisions made for disinfection in place.~~

~~(b) Gravel refill pipes may be installed if they terminate above established ground surface and are provided with watertight caps.~~

~~(c) In wells designed for placement of an artificial gravel pack, the driller shall provide an adequate screen having openings sized on the basis of the grain size of the gravel. The driller shall develop the well to ensure free entry of water without sediment.~~

~~(d) Under no circumstances shall the gravel pack extend to any closer than twenty (20) feet of the established ground surface.~~

~~Section 7. Drilled Well Construction in Consolidated Formations. (1) Where the soil overburden is thirty (30) feet or less in thickness, the driller shall drive or otherwise provide a watertight seal to a depth of at least twenty (20) feet below ground level and at least ten (10) feet into bedrock. The diameter of the drill hole shall be a minimum of one and three-quarter (1 3/4) inches greater than the in[illegible]r diameter of the casing. The driller shall fill the annular space [illegible]h a neat cement-bentonite slurry, bentonite, native clay, impe[illegible]ous drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials. The driller shall install plastic casing as required in subsection (7) of this section.~~

~~(2) Where the soil overburden is greater than thirty (30) feet in thickness, the driller shall install the casing to a watertight seal, a minimum of two (2) feet into stable rock. When the casing is driven, the driller shall fit the casing with a drive shoe and drive the casing to a watertight seal. The driller shall seal the annular space around the casing with impervious drill cuttings, native clay, bentonite, a neat cement-bentonite slurry or a mechanical packer in combination with one (1) or more of the above materials. The driller shall install plastic casing as required in subsection (7) of this section.~~

~~(3) Where the well is drilled to obtain water from the bedrock, beneath a thick (greater than thirty (30) feet) overburden of soil or unconsolidated formations which are unstable and will settle back around the casing, the driller shall drive the well casing to a watertight seal. In instances where a temporary surface casing must be installed to stabilize the bore-hole and in order to facilitate drilling and permanent casing installation, the driller shall fill the annular space around the well casing with impervious drill cuttings, bentonite, a neat cement-bentonite slurry or native clay to a depth of at least twenty (20) feet. The driller shall not install plastic casing under these conditions.~~

~~(4) Where the well is drilled to obtain water from a lower formation the driller shall extend the casing at least two (2) feet below any creviced formation or fractured formation encountered and drive or install the casing watertight into stable bedrock. The diameter of the drill hole through the creviced formation shall be a minimum of one and three-quarter (1 3/4) inches greater than the inner diameter of the casing. The driller shall seal the annular space with a neat cement-bentonite slurry, bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials. Where an outer casing is left in place, the driller shall seal the annular space between the casings with impervious drill cuttings, native clay, bentonite, a neat cement-bentonite slurry, or a mechanical packer in combination with one (1) or more of the above materials. In instances where voids are encountered, the driller shall extend the casing a minimum of two (2) feet into stable rock below the lowermost void and shall seal the annular space with impervious drill cuttings, bentonite, a neat cement-bentonite slurry, clay or a mechanical packer in combination with one (1) or more of the above materials.~~

~~(5) Flowing artesian well. All flowing artesian wells shall be shut in. The driller shall install casing to eliminate flow in the annular space and shall seal the annular space between drill hole and casing with a neat cement-bentonite slurry, bentonite, native clay, impervious drill cuttings, or a mechanical packer in combination with one (1) or more of the above materials.~~

~~(6) In all wells where the casing is driven, the driller shall not use plastic casing.~~

~~(7) Plastic casing installations. When plastic well casing is installed, the drill hole shall be a minimum of two (2) inches greater than the inner diameter of the casing. The driller shall clean the pipe spigot and socket and treat it with a cleaner-primer. The driller shall solvent cement the joints with a quick-setting cement, or thread and couple the joints. Other types of joints may be evaluated and approved by the cabinet. The driller shall cement a coupling on the bottom of the casing to stabilize it in the hole or use centralizers. The driller may use a steel nipple five (5) to ten (10) feet long on the bottom of the casing in lieu of the coupling when the well will be continued by drilling out through the bottom of the casing. In wells completed in consolidated formations, the driller shall set the casing into bedrock a minimum of ten (10) feet where the overburden is thirty (30) feet or less in thickness and a minimum of two (2) feet where the overburden is greater than thirty (30) feet in thickness to prevent leaking around the end of the casing. In wells in bedrock where the well will be drilled to total depth before casing is installed, the driller shall install a watertight mechanical packer at the bottom of the lowermost string of casing. The driller shall seal the annular space between the casing and wall of the drill hole with at least five (5) feet of bentonite immediately above the packer. The driller shall fill the annular space above the bentonite seal with impervious drill cuttings, native clay, bentonite, or a neat cement-bentonite slurry.~~

~~(8) In areas where the overburden is at least fifteen (15) feet~~

~~thick and water can only be obtained at or just above the rock surface, the driller shall set the casing at or just above the rock. Under these conditions, the driller shall seal the lowermost part of the annular space between the casing and wall of the drill hole with a minimum of two (2) feet of bentonite. The driller shall fill the remaining annular space above the bottom seal to the surface with a neat cement-bentonite slurry, bentonite or impervious clay. There shall be no less than twelve (12) feet of overburden from the ground surface to the bottom of the seal. If the casing is to be slotted or a screen installed, the driller shall not extend the slotted section above the bottom of the bentonite or cement seal. If water is encountered in drilling into the rock to develop a reservoir, the driller shall choose which water source is to be used and seal off all others.~~

~~Section 8. Special Type Wells. (1) General. Wells in this classification are dug, bored, driven, and radial collector. The choice of any one (1) of these as opposed to a drilled well is largely dictated by the characteristics of the water-bearing formations or aquifers in the local areas.~~

~~(2) Bored or dug well - well not finished with buried slab. Bored or dug wells that are not finished as buried slab wells shall comply with the following:~~

~~(a) Annular space. The driller shall grout the open space between the excavation and the installed casing with concrete. The driller shall pour the concrete a minimum of six (6) inches thick and without construction joints from the ground surface to a minimum of ten (10) feet below ground level. The driller shall be responsible for the installation of the concrete grout. The driller shall insure that the diameter of the well bore below the grouting is a minimum of four (4) inches greater than the outside diameter of the well casing and is filled with a gravel pack from the well bottom to the water-producing formation and with impervious material from the top of the gravel pack to the bottom of the concrete grout. The driller shall not extend the gravel pack any closer than ten (10) feet of the ground surface.~~

~~(b) Upper terminal. The driller shall extend the casing at least eight (8) inches above finished ground surface. The driller shall provide a cover slab at least four (4) inches thick, adequately reinforced and having a diameter sufficient to extend to the outer edge of the casing. The slab shall be constructed without joints. The driller shall slope the top of the slab to drain to all sides and shall provide a watertight joint where the slab rests on the well casing. If a manhole is installed, the driller shall insure that the manhole consists of a curb cast in the slab extending four (4) inches above the slab. The driller shall provide a watertight cover having sides which overhang the curb at least two (2) inches for any manhole.~~

~~1. If installing a vent, the driller shall provide a vent that consists of pipe extending above the slab with the open end turned down and not less than six (6) inches above the slab. The driller shall cover the open end with twenty-four (24) mesh or finer screen of durable material.~~

~~2. The driller shall cast in place adequate sized pipe sleeve or sleeves in the slab to accommodate the type of pump or pump piping proposed for the well.~~

~~(3) Bored or dug well - buried slab construction. The driller shall terminate the well casing at a depth of ten (10) feet or more below the ground surface. The driller shall use well casing meeting the requirements in Section 9 of this administrative regulation. The driller shall firmly imbed or connect the casing to a pipe cast in a reinforced buried concrete slab. The casing shall be a minimum of four (4) inches in diameter and extend from the concrete slab to at least eight (8) inches above finished ground surface. The driller shall fill the annular space between the casing pipe and the well bore with clean impervious material thoroughly tamped to minimize settling. The driller shall make the diameter of the well bore below the buried slab a minimum of four (4) inches greater than the outer diameter of the well casing. The driller shall fill the well bore with a gravel pack from the well bottom to the water table and with impervious material from the top of the gravel pack to the bottom of the concrete slab. The driller shall not extend the gravel pack any closer than ten (10) feet of the ground surface.~~

~~(4) Driven well. The well point, drive pipe and joints shall be structurally suitable to prevent rupture or distortion during the driving of the well. The driller shall construct the top ten (10) feet of the hole to a diameter of at least two (2) inches greater than the inner diameter of the drive pipe. The driller shall fill the annular space around the drive pipe with impervious material. The type of pump proposed for the well will determine how the top ten (10) feet or more of the well shall be completed. If the working barrel of a hand pump is to be located below ground surface, the driller shall enclose the upper portion of the well in steel or iron casing pipe to a point below the barrel. So called "frost pits" curbed with stone, brick, tile, or other materials shall not be installed.~~

~~(5) Radial collector well. Approval of plans for the well shall be obtained from the cabinet before construction. Factors that shall be considered for approval of a radial collector well include depth of well, types of soil formations, location of well and sources of potential contamination in the surrounding area.~~

~~Section 9. Construction Materials and Other Requirements. (1) Casing and liner pipe. In selection of casing and liner pipe, the driller shall consider the stress to which the pipe will be subjected during construction and the corrosiveness of the water with which it comes in contact. The driller shall install steel or plastic casing, except for bored or dug wells, which the driller shall construct in accordance with Section 8 of this administrative regulation and except for monitoring wells, which the driller shall construct in accordance with Section 13 of this administrative regulation. The driller shall install all pipe and casing in accordance with manufacturer's specifications. The driller shall not install used or rejected casing or pipe shall not be used.~~

~~(a) The driller shall install steel well casing that conforms to the minimum standards given in Table B; or~~

~~(b) The driller shall install plastic well casing and liners that meet the requirements given in Table C. Evidence of compliance shall be display of the National Sanitation Foundation seal on each section of casing.~~

~~(c) The driller shall install plastic well casing and liners that are Standard Dimension Ratio (SDR) rated, have an minimum impact classification of IC-1, and conform to the minimum requirements given in Table C.~~

~~(2) Outer casing. The driller shall install casing, intended for construction purposes only, that is of weight and design as necessary to be watertight and permit installation without distortion or rupture to the specified depth. The driller shall remove the outer casing upon completion of the well.~~

~~(3) Joints. The driller shall insure that all casing and liner pipe joints are watertight.~~

~~(4) Screens or perforated or slotted casing. The driller shall install screen or perforated or slotted casing openings that provide the maximum amount of open area consistent with strength of screen or casing and the grading of the water-bearing formation or gravel pack. The driller shall install materials with openings that permit maximum transmitting ability without clogging or jamming and are sized to provide sediment-free water to the well. Screens shall be made of noncorrosive material.~~

~~(5) Drive shoe. The driller shall equip the pipe that is to be driven with a drive shoe. The driller may use a collar or coupling for light driving. No driller shall drive plastic casing.~~

~~(6) Grouting guides. The driller shall provide a centering shoe for protective casing that is to be grouted in the drill hole or annular space. The driller shall provide sufficient guides or centralizers to permit the unobstructed flow and deposition of the thickness of grout specified.~~

~~(7) Cement grout. The driller shall use the procedures and materials for preparing and placing cement grout that follow:~~

~~(a) Concrete grout. The driller shall mix cement, sand, and water in the proportion of one (1) bag of cement (ninety-four (94) pounds) and an equal volume of dry sand to not more than six (6) gallons of clean water.~~

~~(b) Neat cement grout. The driller shall mix one (1) bag of cement (ninety-four (94) pounds) to not more than six (6) gallons of clean water.~~

~~(c) Neat cement-bentonite slurry. The driller shall mix one (1) bag of cement, (ninety-four (94) pounds) to seven and one-half (7 1/2) gallons of clean water and two (2) to six (6) percent bentonite (by weight two (2) to six (6) pounds) to increase fluidity and to control shrinkage.~~

~~(d) Application. The driller shall perform all cement grouting by~~

~~adding the mixture from the bottom of the annular space upward in one (1) continuous operation until the annular space is filled or to the point of pitless adapter attachment. The driller may add bentonite, aquajel, or similar materials to the annular space in the manner indicated for grouting, prior to the cement grouting, to seal any small crevices or fissures and assure that the annular space is open.~~

~~(c) Setting time. The driller shall not resume drilling operations until the cement grout has set and hardened for at least forty-eight (48) hours when high-early-strength cement is used and at least seventy-two (72) hours when regular cement is used. The driller may reduce setting time from forty-eight (48) hours with high-early-strength cement and seventy-two (72) hours with regular cement by addition of manufacturers' approved chemicals and following manufacturers' recommendations for setting time.~~

~~(8) Plumbness and alignment. The driller shall ensure that the bore of the hole is sufficiently plumb and straight to receive the casing without binding. The driller shall ensure that the casing is sufficiently plumb and straight that it will not interfere with installation and operation of the pump.~~

~~(9) Construction water. The driller shall obtain water used in the drilling process from a source which will not result in the introduction of pollutants into the well.~~

~~(10) For air rotary drilling, the driller shall inject water into the air stream at the rate of approximately three (3) gallons per minute.~~

~~(11) Drill cuttings. The driller shall use drill cuttings that are impervious to fill the annular space of a well to prevent surface water from percolating down the drill hole.~~

~~(12) The driller shall not use any material containing lead in constructing a water well.~~

~~Section 10. Finishing and Testing. (1) Upper terminal. The driller shall terminate the casing or riser pipe at a height above established ground surface consistent with proposed plans for a pump house and pump installation, but not less than four (4) inches above finished ground surface. If practicable, the driller shall not install casing less than two (2) feet above any known conditions of flooding by drainage or run-off from the surrounding land. The driller shall fit the well with a well cap or sanitary seal upon completion of the well and prior to departure from the well site. The driller shall compact and grade the ground surface surrounding the well to drain water away from the well.~~

~~(2) Disinfection. For all wells except monitoring wells, the well driller shall disinfect all wells upon completion of the driller's work. The driller shall introduce sufficient chlorine to give a concentration of at least 100 parts per million to the water in the well. (CAUTION: When working with chlorine, persons should be in ventilated place. The powder or strong liquid should not come in contact with skin or clothing. Solutions are best handled in wood, plastic or crockery containers because metals are corroded by strong chlorine solutions.)~~

~~(a) Drilled wells. The driller shall disinfect the well in accordance with the following:~~

~~1. Determine the amount of water in the well by multiplying the gallons per foot (from Table D) by the number of feet of water in the well.~~

~~2. For each 100 gallons of water in the well, use the amount of chlorine liquid or compound given in Table D. Mix this total amount in about ten (10) gallons of water. If dry granules or tablets are used, they may be added directly to drilled wells.~~

~~3. The total amount of this solution shall be poured into the top of the well before the seal is installed and splashed around the lining, or wall, of the well. Ensure that the solution has contacted all parts of the well.~~

~~4. Where the driller installs a pump, the driller shall connect one (1) or more hoses from faucets on the discharge side of the pressure tank to the top of the well casing and start the pump, recirculating the water back into the well for at least fifteen (15) minutes. Then open each faucet in the system until a chlorine smell is evident. Close all faucets. Seal the top of the well.~~

~~5. Let stand for several hours, preferably overnight.~~

~~6. After standing, operate the pump, discharging water from all outlets until all chlorine odor disappears. Faucets on fixtures discharging to septic tank systems shall be throttled to a low flow to avoid overloading the disposal system.~~

~~7. Where no pump is installed, the well shall be bailed until all chlorine odor disappears before sampling.~~

~~(b) Dug wells. The driller shall disinfect the well in accordance with the following:~~

~~Diameter of well (in feet)~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~	~~10~~
~~Amount of 5.25% laundry bleach to use per foot of water (in cups)~~	~~1.5~~	~~3~~	~~4.5~~	~~6~~	~~9~~	~~12~~	~~18~~
~~Amount of 70% Hypochlorite granules to use per foot of water (in ounces)~~	~~1~~	~~2~~	~~3~~	~~4~~	~~6~~	~~8~~	~~12~~

~~1. The amount of disinfectant required is determined primarily by the amount of water in the well. Using Table E, calculate the amount of chlorine that must be added for each foot of water in the well, according to its diameter.~~

~~2. To determine the exact amount of bleach to use, multiply the amount of disinfectant indicated as determined by the well's diameter times the number of feet of water.~~

~~3. This total amount of bleach shall be added to approximately ten (10) gallons of water, and splashed around the lining, or wall of the well. Be certain that the solution has contacted all parts of the well, using the entire amount of disinfectant. Seal the top of the well.~~

~~4. When this is done, pump enough water so the strong chlorine odor is evident. When the odor is detected, stop the pumping and allow the solution to remain in the well overnight.~~

~~5. After standing, operate the pump, discharging water from all outlets until a colormetric test indicates the absence of chlorine. Faucets on fixtures discharging to septic tank systems shall be throttled to a low flow to avoid overloading the disposal system.~~

~~(c) Water samples. Upon completion and disinfection of a new well or modification of an existing well, the driller shall be responsible for having the well tested for fecal coliform if the well is for potable use. The driller shall also give the owner information prepared by the cabinet explaining the importance of water well sampling, procedures for sampling, and how the water can be tested to assure a safe supply of water. The water sample shall not be taken until all chlorine has been removed from the well.~~

~~Section 11. Modification of Wells. (1) General. Wells constructed prior to the effective date of this administrative regulation need not meet its provisions. However, when a well is modified, reconstructed, or repaired, the work shall include those changes necessary to make the well conform to this administrative regulation.~~

~~(2) Well pits.~~

~~(a) No new well pits shall be allowed.~~

~~(b) No person shall modify existing well pits. Any person modifying a well shall eliminate existing well pits. The driller shall extend the casing a minimum of four (4) inches above the finished ground surface. Any flooring and the walls of the pit shall be broken and removed and the pit shall be filled with compacted earth.~~

~~(3) Notification. Within thirty (30) days after modification of a well, the driller shall provide written notification of the modification to the cabinet. The notification shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045), incorporated in Section 3(6) of this administrative regulation.~~

~~Section 12. Abandoned Wells. (1) General. If a constructed water well is not suitable for its intended purpose and is to be abandoned, or if a well is drilled too close to a previously constructed well the owner shall ensure that the abandonment procedures are implemented as soon as possible, but no later than thirty (30) calendar days after completion of the well or after the owner has made the decision that the uncompleted well or previously constructed well is not to be used. The driller shall ensure that the well is completely filled in such a manner that the vertical movement of water within the annular space is effectively and permanently prevented.~~

~~(a) Preparation for wells to be abandoned. Before a well which is to be abandoned is sealed, the driller shall measure the depth~~

~~and check to ensure that there are no obstructions within the well which may interfere with plugging operations. The driller shall pull or drill out screens, casings and liner pipes whenever possible to assure placement of an effective seal. The driller shall remove at least the upper five (5) feet of casing, liner pipe, brick, stone, metal, or other materials in all wells to prevent the passage of water along the casing and entering the water-bearing strata. The driller shall pull rather than cut the top joint of all plastic or steel casing.~~

~~(b) Disinfection. The driller shall disinfect the well and fill materials by using sodium hypochlorite or calcium hypochlorite. The driller shall dissolve sufficient chlorine compound to produce a calculated concentration of at least 100 parts per million (100 ppm) available chlorine in double the volume of water in the well. The driller shall place the fill material in the well after the water in the well has been so treated. Cement grouts do not require disinfection.~~

~~(c) Fill materials. The driller shall fill the aquifer or water-bearing zones in the wells with clean (relatively free of organic matter), disinfected, and dimensionally stable materials. The driller shall mechanically pack the fill materials to avoid later settlement. Neat cement shall not require disinfection. Except as specified in paragraph (e) of this subsection and subsections (2) through (5) of this section, the driller shall use only neat cement grout, a neat cement-bentonite slurry, or bentonite in plugging water wells. In all cases, clay may be used to fill the uppermost five (5) feet of the bore-hole.~~

~~(d) Placement of grout. The driller shall introduce neat cement or neat cement-bentonite grout used as a sealing material in abandonment operations at the bottom of the well or interval to be sealed (or filled) and shall place it progressively upward to the top of the well. For all such sealing materials the driller shall use grout pipe, tremie, cement bucket or dump bailer, in such a way as to avoid segregation or dilution of the sealing materials. Dumping grout material from the top shall not be permitted.~~

~~(e) Permanent bridges. Permanent bridges may be used only where voids are encountered which are too large to be filled. Under these circumstances, the driller shall completely fill the well to the bottom of the void with impermeable material. The driller shall construct a permanent bridge immediately above the void. The permanent bridge shall be at least ten (10) feet thick. Permanent bridges shall be composed only of neat cement. The driller shall allow the cement to harden for at least twenty-four (24) hours, if Type I cement is used, or for at least twelve (12) hours if Type III (high early strength) cement is used, before backfilling is continued. Temporary bridges used to provide a base for the permanent bridge shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction are acceptable. Notification shall be given to the cabinet at least twenty-four (24) hours before a permanent bridge is to be installed.~~

~~(f) Preexisting contamination. A well unsuitable for its intended use which has been affected by salt water intrusion or any other pollutant shall be considered a special case. The method of filling and sealing such wells shall be submitted to the cabinet by the drillers and shall be subject to individual review and written approval by the cabinet prior to sealing. In the sealing of a double or multiple cased well, the driller shall submit a drawing of the well with a description of the proposed procedure and materials to be used, for prior approval by the cabinet.~~

~~(g) Well abandonment records. Before equipment is removed from the site, the exact location of the well or drill hole to be sealed and abandoned shall be determined and recorded, tying in the location with permanent reference points. The driller shall record all information relative to the abandonment procedures and the location of the abandoned well on forms provided by the cabinet with copies supplied to the cabinet and the owner of the land within thirty (30) days. The information shall be submitted on the form entitled Kentucky Water Well Record (DEP-4045) incorporated by reference in Section 6(3) of this administrative regulation.~~

~~(2) Abandonment of wells in unconsolidated formations. Drillers shall completely fill a well unsuitable for its intended use that is constructed only in unconsolidated formations and contains water under water table or atmospheric conditions. Clean, disinfected sand or gravel may be used as a fill material from the well bottom to the water table level. If the water-bearing formation consists of coarse sand or gravel and producing wells are located nearby, only sealing materials which do not adversely affect the producing wells shall be used. A driller shall not extend the sand or gravel fill any closer than ten (10) feet of the ground surface. The driller shall place a minimum of five (5) feet of neat cement grout, neat cement-bentonite slurry or bentonite above the sand or gravel fill. The driller shall fill the uppermost portion of the well above the cement or bentonite plug with clay or an impermeable material appropriate to the intended use of the land. Neat cement, a neat cement bentonite slurry, or bentonite may be used to fill the well to the ground surface.~~

~~(3) Abandonment of wells in consolidated formations. The driller shall completely fill a well unsuitable for its intended use that is constructed in consolidated formations or bedrock with neat cement, a neat cement-bentonite slurry, or bentonite, if there is no artesian flow of water in the well. The driller shall not use sand or gravel except for those wells for which a well record is on file with the cabinet. Use of sand or gravel shall be considered a special case and the method of filling and sealing such wells shall be subject to written approval by the cabinet prior to sealing. Under these conditions, the cabinet may allow the use of sand and gravel to fill through the water-producing horizon, if there is limited vertical movement of water in the formation and such movement will not adversely affect the quality or quantity of water in producing wells. The driller shall place neat cement or neat cement-bentonite grout or bentonite immediately above the sand and gravel fill, extending up to within five (5) feet of the ground surface. The driller shall fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land. In the event the casing cannot be pulled or drilled out, the driller shall use bentonite slurry to fill the length of the casing.~~

~~(4) Abandonment of flowing artesian wells. The sealing of abandoned flowing artesian wells or wells which are unsuitable for their intended use and in which there is vertical movement of water between aquifers requires special attention. The driller shall notify the cabinet at least twenty-four (24) hours before such a well is to be sealed. The driller shall pressure cement such wells with neat cement mixed with the minimum quantity of water that will permit handling. In order to place the cement, the driller shall restrict flow. Gravel or stone aggregate not more than one-third (1/3) of the diameter of the hole may be placed through the water-bearing horizon, if its extent is known. The driller shall place a well packer, cast-iron plug, or temporary bridge at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow. Temporary bridges shall consist only of inorganic materials - except that patented devices containing expandable neoprene, plastic, and other elastomers, and specifically designed for use in well construction shall be acceptable. The driller shall place the neat cement grout in one (1) continuous operation from the top of the packer, plug or bridge to five (5) feet of the surface or to the bottom of an overlying water-bearing formation. In the latter situation it may be necessary to repeat the process described in this subsection. The driller shall fill the uppermost five (5) feet of the bore-hole with clay or an impermeable material appropriate to the intended use of the land.~~

~~Section 13. Monitoring Well Construction. (1) After July 1, 1991, no person shall construct or modify a monitoring well without having a valid certificate issued in accordance with KRS 223.400 through 223.460.~~

~~(2) Drillers shall construct monitoring wells to maintain existing natural protection against the introduction of pollutants into aquifers, prevent the entry of pollutants through the bore-hole, and prevent the intermingling of groundwater from different aquifers through the bore-hole. Compliance with this section shall not relieve the driller from specific requirements under other federal or state regulatory programs.~~

~~(3) The driller shall use materials in the construction of a monitoring well appropriate to the purpose of that well. The driller shall seal the annular space above the sampling depth with suitable material, such as cement grout or bentonite, in order to prevent the introduction of pollutants into the samples or the groundwater. The driller shall complete the well at least four (4) inches above ground level or shall install a waterproof flush mount device capable of~~

~~preventing surface water run-off, pollutants and contaminants from entering the well. The driller shall label the well with a Kentucky well tag. Within thirty (30) days after a monitoring well has been constructed or modified, the driller shall provide the well with a locking well cap.~~

~~(4) The driller shall provide the cabinet with a record of the well as specified in KRS 223.440.~~

~~(5) The record shall be submitted on the form entitled Kentucky Monitoring Well Record (DEP-8043). The following document is adopted and filed herein by reference: Kentucky Monitoring Well Record (DEP-8043) (January 1, 1991). Copies of this document may be obtained from the Environmental and Public Protection Cabinet, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410. The material is available for public inspection and copying during business hours of 8 a.m. to 4:30 p.m. at the Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.~~

~~(6) The owner shall ensure that monitoring wells are properly abandoned within thirty (30) days of the last sampling date or the determination is made that the monitoring well is unsuitable for use as a monitoring well.~~

~~(7) This section shall become effective on July 1, 1991.~~

~~TABLE A~~	
~~Required Minimum Distances From Lateral Sources of Pollutants~~	
~~Lateral Sources of Contamination~~	~~Minimum Distances for Clay & Loam Soils~~
~~Cess Pools~~	~~150 feet~~
~~Leaching Pit~~	~~100 feet~~
~~Pit Privy~~	~~75 feet~~
~~Subsurface Seepage Tile~~	~~75 feet~~
~~Lateral Fields~~	~~70 feet~~
~~Manure Piles~~	~~75 feet~~
~~Septic Tank~~	~~50 feet~~
~~Barnyard~~	~~50 feet~~
~~Sewers (noncast iron) (nonperforated)~~	~~50 feet~~
~~Sewers (cast-iron with watertight leaded or mechanical joints)~~	~~15 feet~~
~~Sewers (Schedule 40 or heavier plastic pipe with solvent cemented or elastomeric seal joints.) Pipe is solid pipe not perforated.~~	~~15 feet~~
~~Footing Drains (no connection to a sewer or a sump handling sewage)~~	~~10 feet~~
~~Pump House Floor Drain~~	~~2 feet~~
~~Cemeteries~~	~~75 feet~~
~~Property Lines~~	~~20 feet~~

~~TABLE B~~			
~~Casing and Liner Pipe Weights and Dimensions~~			
~~Size (inches)~~	~~External Diameter (inches)~~	~~Thickness (inches)~~	~~Weight (pounds per foot)~~
~~1~~	~~1.315~~	~~0.120~~	~~-~~
~~1 1/4~~	~~1.660~~	~~0.120~~	~~-~~
~~1 1/2~~	~~1.900~~	~~0.120~~	~~-~~
~~2~~	~~2.375~~	~~0.120~~	~~2.89~~
~~2 1/2~~	~~2.875~~	~~0.120~~	~~3.53~~
~~3~~	~~3.500~~	~~0.120~~	~~4.33~~
~~3 1/2~~	~~4.000~~	~~0.120~~	~~4.97~~
~~4~~	~~4.500~~	~~0.188~~	~~8.66~~
~~5~~	~~5.563~~	~~0.188~~	~~10.79~~
~~6~~	~~6.625~~	~~0.188~~	~~12.92~~
~~8~~	~~8.625~~	~~0.277~~	~~24.70~~
~~10~~	~~10.750~~	~~0.307~~	~~34.24~~
~~12~~	~~12.750~~	~~0.330~~	~~43.77~~
~~14~~	~~14.000~~	~~0.375~~	~~54.57~~
~~16~~	~~16.000~~	~~0.375~~	~~62.58~~
~~18~~	~~18.000~~	~~0.375~~	~~70.59~~
~~20~~	~~20.000~~	~~0.375~~	~~78.60~~

~~Pipe sizes not listed that are less than eight (8) inches in diameter shall match listed values as closely as possible.~~

~~Pipe sizes not listed that are eight (8) inches in diameter or greater shall be Schedule 30 pipe as a minimum.~~

~~TABLE C~~			
~~Plastic Casing and Liner Pipe Specifications~~			
~~Size (inches)~~	~~SDR~~	~~External Diameter (inches)~~	~~Minimum Wall (inches)~~
~~4~~	~~26~~	~~4.500~~	~~0.173~~
~~5~~	~~26~~	~~5.563~~	~~0.214~~
~~6~~	~~26~~	~~6.625~~	~~0.255~~
~~8~~	~~26~~	~~8.625~~	~~0.332~~
~~10~~	~~26~~	~~10.750~~	~~0.413~~
~~12~~	~~26~~	~~12.750~~	~~0.490~~
~~14~~	~~26~~	~~14.000~~	~~0.539~~
~~16~~	~~26~~	~~16.000~~	~~0.616~~

~~TABLE D~~		
~~Required Amounts of Disinfectant~~		
~~Disinfectant Diameter of Well in Inches~~	~~Volume of Water in Gallons Per Foot of Depth~~	~~Required for Each 100 Gallons of Water~~
~~3~~	~~0.37~~	~~Laundry Bleach (5.25% chlorine) = 3 cups~~
~~4~~	~~0.65~~	~~-~~
~~5~~	~~1.0~~	~~Hypochlorite Granules (70% chlorine) = 2 oz.~~
~~6~~	~~1.5~~	~~-~~
~~8~~	~~2.6~~	~~-~~
~~10~~	~~4.1~~	~~-~~
~~12~~	~~6.0~~	~~-~~

~~1 cup = 8 ounces measuring cup~~
~~(2 cups = 1 pint; 4 cups = 1 quart)~~
~~1 ounce = 1 heaping tablespoon granules~~
~~(16 ounces = 1 pound)~~

~~TABLE E~~							
~~Required Amounts of Disinfectant~~							
~~-~~	~~Diameter of well (in feet)~~						
	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~	~~10~~
~~Amount of 5.25% laundry bleach to use per foot of water (in cups)~~	~~1.5~~	~~3~~	~~4.5~~	~~6~~	~~9~~	~~12~~	~~18~~
~~Amount of 70% hypochlorite granules to use per foot of water (in ounces)~~	~~1~~	~~2~~	~~3~~	~~4~~	~~6~~	~~8~~	~~12~~

HENRY "HANK" LIST, Deputy Secretary for
LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 11 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 9, 2008)

401 KAR 6:350. Monitoring well construction practices and standards.

RELATES TO: KRS 223.400 -223.460, 223.991, **224.01-400,** 224.01-405, 224.43-010 - 224.43-815, 224.46-012 - 224.46-870, 224.60-100 - 224.60-160, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 151.110, 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the [~~Environmental and Public Protection~~] Cabinet to promulgate administrative regulations establishing standards of practice for water well construction. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

Section 1. General Requirements. (1) Certified monitoring well driller requirement. Each monitoring well shall be constructed, modified, or abandoned by natural persons certified in accordance with KRS 223.425 and 401 KAR 6:320.

(2) Construction and well performance requirement. Permanent and temporary monitoring wells shall be constructed, modified, and abandoned in such a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(3) Reporting requirement. Within sixty (60) days after completion, modification, or abandonment of a monitoring well or temporary monitoring well, the certified monitoring well driller shall submit a report of well construction to the cabinet.

(a) All information about the depth and the materials used in the monitoring well construction, modification, or abandonment shall also be recorded.

(b) The report shall be submitted on the form Uniform Kentucky Well Construction Record.

(4) Records to monitoring well owner. The certified monitoring well driller shall provide a copy of the Uniform Kentucky Well Construction Record to the monitoring well owner within sixty (60) days after a monitoring well has been constructed, modified, or abandoned.

(5) The certified well driller shall tag each well constructed or modified with a well identification number tag provided by the cabinet.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the certified driller shall tag the well, as appropriate, and include the well identification number assigned in the Uniform Kentucky Well Maintenance and Plugging Record.

(6) Variance. If conditions exist or are believed to exist [~~at a monitoring well site~~] that preclude compliance with the requirements of this administrative regulation, the certified [~~monitoring~~] well driller may request a variance from the water well drillers program prior to well construction or well abandonment. The variance request shall be submitted in writing on the Kentucky Monitoring Well Variance Request form.

(a) The variance shall include the following:

1. A thorough description of the land use at the site and at adjacent and surrounding properties;

2. Distance between the proposed monitoring-well location and other existing water-supply wells or monitoring wells on adjacent properties;

3. Distance between the proposed monitoring-well location and potential pollution sources, both on site and on adjacent properties, including septic systems, sewers, petroleum and chemical storage tanks, or other potential pollution sources;

4. A description of the geologic conditions expected at the site, including soil thickness, type of bedrock, if present, perched water, confining zones, and depth to groundwater; [~~and~~]

5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;

6. A justification for the variance; and

7. Proposed construction, modification, or abandonment procedures to be used in lieu of compliance with this administrative regulation and an explanation as to how the alternate well construction procedures ensure the protection of the quality of the groundwater and the protection of[~~that shall ensure the protection of groundwater quality and~~] public health and safety.

(b) Written variance procedure. The driller shall request a variance and obtain cabinet approval before well construction begins.

1. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.

2. The cabinet shall notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance.

3. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

(c) Verbal variance for an emergency.

1. A driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure in paragraph (b) of this subsection may result in:

a. Loss of access to potable water for the intended user;

b. Failure to address an existing or impending environmental emergency in accordance with KRS 224.01-400; or

c. A risk to public health or safety.

2. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the water well driller shall submit to Kentucky Water Well variance Request form, signed by the certified driller and well owner, to the cabinet.

(d) The variance approval shall list the conditions of the variance, including:

1. The approved alternate well construction procedures;

2. The well sampling requirements; and

3. The requirement to notify surrounding property and well owners of the variance, if applicable.

(e)[~~The certified well driller may request a verbal approval for a variance, provided that the variance request shall be submitted to the cabinet on the Kentucky Monitoring Well Variance Request within fifteen (15) days of the date the verbal variance is approved.~~

~~(c)1. The cabinet shall notify the applicant in writing within ten (10) days of its decision either to grant or deny the variance.~~

~~2. The cabinet shall issue variance approvals by letter.~~

~~3. The cabinet shall not issue a variance if the proposed well construction will not ensure the protection of groundwater quality and public health and safety.~~

~~(d)~~] The certified well driller shall submit a copy of the Kentucky Monitoring Well Variance Request form, signed by the certified driller and the well owner,[~~variance letter of approval along with the Uniform Kentucky Well Construction Record~~] to the cabinet and the monitoring well owner within sixty (60) days after the[~~a variance~~] well is[~~has been~~] completed.

Section 2. Design Factors. The certified monitoring well driller shall construct each monitoring well to comply with the following:

(1) Monitoring wells shall not be constructed in flood zones;

(a) If a reasonable location does not exist, monitoring wells may be constructed in flood zones providing the well is water tight and the well casing extends a minimum of two (2) feet above the maximum known flood elevation.

(b) Measures shall be taken during drilling and well construction to prevent the introduction or migration of contaminants to a water-bearing zone or aquifer;[~~.~~]

(2) Water used in the drilling or decontamination process shall be potable; and

(3) Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring[~~, which is not intended for groundwater monitoring, intercepted during the drilling phase~~] shall be sealed off to prevent down-hole cross contamination before advancing the borehole.

(a) Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring[~~, which is not intended for groundwater monitoring, intercepted during the drilling phase~~] shall be prevented from contributing to a well by installing outer casing with a watertight seal.

(b) The permanent outer casing shall have a minimum two (2) inch annulus between the borehole and the outside diameter of the

outer casing and a minimum two (2) inch annulus between the outer casing and the inner casing.

(c) The outer casing shall be grouted with sealing materials using a grout pipe.

(d) A minimum cure time following the sealing material manufacturer's recommendation shall be required before drilling through the grout seal.

(e) Temporary outer casing may be installed [~~by the hollow-stem auger method or sonic drilling method~~].

Section 3. Monitoring Well Construction. (1) General Requirements.

(a) All permanent and temporary monitoring wells shall be constructed, modified, and abandoned in a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(b) Monitoring wells shall be constructed in a manner as to yield both groundwater samples and groundwater-level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

(2) Boreholes.

(a)1. Boreholes drilled in unconsolidated formations shall be a minimum of four (4) inches greater than the outside diameter of the well casing and well screen except for sonic wells, direct push wells, and temporary wells.

2. The driller shall clean out the open borehole if soil or rock fall into the open borehole during auger or drill-stem retrieval.

(b) Boreholes drilled in consolidated formations shall be a minimum of two (2) inches greater than the outside diameter of the well casing and screen.

(c) Boreholes drilled by the hollow-stem auger or sonic drill method shall have a minimum auger or casing inner diameter (ID) for the following:

1. Four and one quarter (41/4) inches ID for the installation of two (2) inch monitoring well casing;[~~.~~]

2. Six and one quarter (61/4) inches ID for the installation of four (4) inch monitoring well casing; or[~~.~~]

3. Larger augers shall be required if installation difficulties due to geologic conditions or greater depths are anticipated.

(3)(a) Lubricant shall not be used on drill pipe threads, hollow-stem or solid-stem augers, or on the exterior of the drill pipe, unless approved in advance by the cabinet following the variance procedure in Section 1(6)[~~1(4)~~] of this administrative regulation.

(b) A request to use a lubricant shall be submitted in writing to the water well drillers program, and a Material Safety Data Sheet (MSDS) for the proposed lubricant shall be submitted with the request.

(4)(a) If the air rotary drilling method is used drill cuttings shall be contained.

(b) Air rotary drills using screw compressor systems shall have a coalescing filter system that captures excess entrained compressor oils.

(5) Drilling Derived Waste (DDW) shall be properly containerized.

Section 4. Monitoring Wells Completed Below Ground Surface. (1)(a) Flush mount wells may be used for parking lot areas with high traffic, and limited space, such as Underground Storage Tank (UST) facilities, if installed in a manner that prevents surface water or contaminants from migrating into the well.

(b) Monitoring wells completed below ground surface shall have a flush-mount manhole[~~flush mount man hole~~] with a bolt-down well cover and waterproof seals installed to prevent the inflow of surface water and contaminants.

(2) The concrete surface pad shall slope away from the monitoring well to prevent precipitation or contaminants from accumulating around the well.

(3) Waterproof seals shall be installed between the cover and the box, and O-rings or gaskets shall be installed around the bolts that mount on the cover.

(4) The cover shall consist of material able to withstand the maximum expected loadings.

(5) A water-tight lockable cap shall be attached to the top of the well casing.

(6) The well casing shall be cut so that the locking cap shall install properly and provide a waterproof seal.

(7) A flush-mount monitoring well shall have a concrete surface pad that shall be a minimum of four (4) inches thick with a minimum two (2) foot diameter or square pad centered on the well.

Section 5. Direct Push Monitoring Wells. (1) Direct push monitoring wells installed using direct push technology shall be constructed, modified, and abandoned in such a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(2) Temporary monitoring wells shall be constructed in such a manner as to yield both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

(3)[~~comply with this administrative regulation.~~] Direct push monitoring wells shall also comply with the following additional standards:

(a)[~~(1)~~] The outside diameter of the borehole shall be a minimum of one (1) inch greater than the outside diameter of the well casing;

(b)[~~(2)~~] Premixed bentonite slurry or bentonite chips with a minimum of one-eighth (1/8) inch diameter shall be used in the sealed interval below the static water level; and

(c)1.[~~(3)(a)~~] Direct push monitoring wells shall not be constructed through more than one (1) water-bearing formation unless the upper water bearing zone is isolated by temporary or permanent casing.

2.[~~(b)~~] The direct push tool string may serve as temporary casing.

(4) Prepacked well screens may be used.

Section 6. Temporary Monitoring Wells. (1) Temporary monitoring wells shall be constructed, modified, and abandoned in such a manner as to prevent the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(a) Temporary monitoring wells shall be constructed in such a manner as to yield both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

(b) The annulus between the borehole and the well casing shall be sealed at the surface with a bentonite seal to prevent surface water from migrating into the borehole.

(2) Each temporary monitoring well shall be properly abandoned within seventy-two (72) hours after the well was constructed.

(3)(a) A record of a temporary monitoring well constructed and abandoned shall be submitted by the certified driller on the Uniform Kentucky Well Maintenance and Plugging Record to the cabinet and the monitoring well owner within sixty (60) days from the date abandoned.

(b) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall also be submitted to the Division of Waste Management program regulating the facility, if applicable.

Section 7. Materials for Monitoring Wells and Temporary Monitoring Wells.

(1) Well casing and screens.

(a) Monitoring well casing and well screen materials shall be constructed of materials determined on a site-specific basis to ensure that the integrity of the material shall not be affected by contaminants or introduce contaminants to the groundwater.

(b) Well casing and screens shall be resistant to chemical and microbiological corrosion and degradation.

(c) Monitoring well casings and screens shall be able to withstand the physical forces acting upon them during and following their installation, and during their use. This includes force due to suspension in the borehole, grouting, development, purging, pumping, sampling, and forces exerted on the well casing and screens by the surrounding geologic materials.

(d) The certified driller shall not install used, damaged, or con-

taminated well casing or screens.

(e) Well casing and screens shall have a minimum inside diameter of two (2) inches except for direct push and temporary wells.

(2) Joints and couplings.

(a)1. All joints and couplings shall be flush type.

2. All joints shall be watertight.

(b) The monitoring well casing shall extend a minimum of two and one half (2 1/2) feet above ground surface, except as provided for in Section 4 of this administrative regulation.

(c)1. A minimum annular space of two (2) inches shall be maintained between the borehole wall and the outside diameter of the monitoring well casing.

2. In a multi-cased monitoring well the annulus between the well casings shall be a minimum of two (2) inches.

(d) Centralizers shall be used in monitoring wells greater than fifty (50) feet in depth.

(e) Centralizers shall be installed at a minimum of ten (10) foot intervals.

(3) Filter pack.

(a)1. The filter pack materials shall consist of clean, rounded to well-rounded, insoluble particles of quartz silica composition.

2. The filter pack materials shall be of a size that minimizes head losses through the filter pack and prevents sediment movement through the well screen into the well.

(b) The filter pack shall be placed in the annulus in such a manner as to prevent bridging. At a minimum the filter pack shall be placed slowly and carefully by the free-fall method.

(c) The depth to the filter pack shall be continually monitored during installation.

(d)1. A minimum of six (6) inches of filter pack shall be placed below the bottom of the well screen.

2. The filter pack shall extend at least two (2) feet above the top of the well screen.

(e) Prepacked well screens may be used if the filter-pack material, filter-pack grain size, and the screen slots are properly sized for the monitoring zones.

(4) Sealing Materials.

(a) Only potable water shall be used in mixing sealing materials used in the construction or abandonment of monitoring wells.

(b) The sealing material shall be placed in the annulus by a grout pipe, starting at the top of the bentonite seal to within three (3) feet of the ground surface.

(c) Side-discharge grout pipes shall be used if sealing the annulus for wells that are 100 feet deep or greater.

(d) The concrete surface pad or surface casing shall not be installed until the sealing materials placed in the annulus have settled and cured.[~~The sealing material shall set for a minimum of twenty-four (24) hours before the concrete surface pad or surface casing is installed.~~]

(e) Bentonite seal.

1. The bentonite seal shall consist of high solids sodium bentonite pellets with a minimum of thirty (30) percent solids and shall be placed in the annulus by a method that ensures the prevention of bridging.

2.a. The depth to the bentonite seal shall be continually monitored during installation.

b. The bentonite seal shall extend a minimum of two (2) feet above the top of the filter pack.

3.a. Hydration time of the bentonite seal shall be according to the manufacturer's recommendation.

b. Only potable water shall be used, if necessary, as the hydration medium.

c. The surface opening and the annulus shall be protected during the hydration period to prevent material from falling into the borehole.

(f) Annular seal.

1. The annular seal shall be installed in such a manner as to prevent the migration of contaminants or pollutants along the monitoring well annulus into the well.

2. The sealing material shall be placed so that pollutants cannot migrate through the annulus.

3. The sealing materials shall not have a harmful effect[~~affect~~] on the well casings or screens or damage the surface completion of the well.

Section 8. Surface Completion. (1) Surface casing.

(a) Monitoring wells completed with the well casing extending above ground surface shall be constructed with a steel, anodized aluminum, or PVC outer protective surface casing with a locking cap.

(b) A water tight well cap shall be installed on the well casing.

(c) The well casing shall be cut in a manner so that the locking cap shall install properly and provide a waterproof seal.

1.a. Outer protective surface casings shall have a minimum of two (2) inches of clearance between the inside diameter of the outer protective casing and the outside diameter of the well casing.

b. The outer protective surface casing shall extend a minimum of one (1) inch and a maximum of twelve (12)[~~four (4)~~] inches above the inner well casing.

c. The outer protective surface casing shall be installed by pouring a concrete slurry mix [~~of fifty (50) percent cement and fifty (50) percent sand and gravel~~] into the borehole from the top of the annular seal[~~annulus~~] to the ground surface.

2. The outer protective surface casing shall then be pushed into the wet concrete slurry a minimum of two (2) feet below the ground surface.

3. The outer protective surface casing shall have a minimum of two (2) weep holes for drainage. The weep holes shall be a minimum diameter of one-quarter (1/4) inch and shall be located directly above the top of the concrete surface pad.

4. The outer protective surface casing shall [~~be painted a highly visible color and~~] bear the Kentucky Water Well Tag with the[~~and~~] water well number.

(2) Bumper guards. Monitoring wells extending above ground surface shall have four (4) protective bumper guards consisting of steel pipes a minimum of three (3) inches in diameter and a minimum of five (5) feet in length.

(a)1. The bumper guards shall be installed to a minimum depth of two (2) feet below ground surface in a concrete footing and shall extend a minimum of three (3) feet above ground surface.

2. Concrete shall be placed into the steel pipe bumper guards for additional strength.

(b) The bumper guards shall be painted a highly visible color.

(c) A modification to the bumper guard requirement shall be pre-approved by the water well drillers program according to the variance procedure in Section 1(6)[~~1(4)~~] of this administrative regulation.

(3) Concrete surface pad.

(a) All monitoring wells shall have a concrete surface pad a minimum of six (6) inches thick with a minimum three (3) foot diameter or square pad centered on[~~, extending a minimum of two (2) feet around~~] the well.

(b) The concrete surface pad shall slope away from the monitoring well in a manner as to prevent precipitation or contaminants from accumulating around the well.

Section 9. [~~Monitoring Well Abandonment. (1) General requirements. A monitoring well which has been damaged, or is otherwise unsuitable for use as a monitoring well, shall be abandoned within thirty (30) days from the last sampling date or thirty (30) days from the date it is determined that the well is no longer suitable for its intended use.~~

~~(a) Monitoring wells shall be abandoned in such a manner as to prevent the migration of surface water or contaminants to the subsurface and to prevent migration of contaminants among water bearing zones.~~

~~(b) A Division of Waste Management program that permits or regulates the facility at which a monitoring well is to be abandoned shall be notified a minimum of ten (10) working days prior to abandonment of each monitoring well.~~

~~(c) Each temporary monitoring well shall be abandoned within seventy-two (72) hours after installation.~~

~~(d)1. A record of a monitoring well abandoned shall be submitted by the certified driller on the Uniform Kentucky Well Maintenance and Plugging Record to the water well drillers program within sixty (60) days from the date abandoned.~~

~~2. A copy of the Uniform Kentucky Well Maintenance and~~

~~Plugging Record shall be submitted to the cabinet program regulating the facility, if applicable.~~

~~(2) Abandonment methods and sealing materials for all types of monitoring wells.~~

~~(a) The surface casing, monitoring well casing, well screen, filter pack, bentonite seal, and cement shall be removed.~~

~~(b) The borehole shall be plugged with sealing material by grout-pipe method or by pressure injection from the bottom of the boring to the top of the borehole, except as provided in paragraph (c) of this subsection.~~

~~(c) The borehole may be plugged using the gravitational displacement, or free-flow method to a maximum depth of fifty (50) feet. If this method is employed, the well driller shall use bentonite with a minimum particle size of three-eight (3/8) inches, and the bentonite shall be used according to the manufacturer's recommendation.~~

~~(d) The top two (2) feet of the borehole shall be filled with materials consistent with surrounding ground surface.~~

~~(e) If the well casing cannot be removed, an alternate method of abandonment may be employed, if approved in advance by the cabinet in accordance with the variance process in Section 1(4) of this administrative regulation.~~

~~Section 10.~~] Well Development. (1) Newly installed monitoring wells shall be developed [~~by removing a minimum of five (5) well volumes of water from the well and pumping the well dry three (3) times in a twenty-four (24) hour period or~~] until the column of water in the well is free of visible sediment.

(2) This well-development protocol shall not be used[~~is not intended to serve~~] as a method for purging prior to water quality sampling.

Section 10.[~~11.~~] Repairs or modifications to the well casing shall be performed by a certified monitoring well driller and shall be reported to the water well drillers program on the Uniform Kentucky Well Maintenance and Plugging Record.

Section 11. Monitoring Well Abandonment. (1) General requirements. A monitoring well that has been damaged or is otherwise unsuitable for use as a monitoring well, shall be abandoned within thirty (30) days from the last sampling date or thirty (30) days from the date it is determined that the well is not longer suitable for its intended use.

(a) Monitoring wells shall be abandoned in such a manner as to prevent the migration of surface water or contaminants to the subsurface and to prevent migration of contaminants among water bearing zones.

(b) A Division of Waste Management program that permits or regulates the facility at which a monitoring well is to be abandoned shall be notified a minimum of ten (10) working days prior to abandonment of each monitoring well.

(c) Each temporary monitoring well shall be abandoned within seventy-two (72) hours after installation.

(d)1. A record of the monitoring well abandonment shall be submitted by the certified driller on the Uniform Kentucky Well Maintenance and Plugging Record to the water well drillers program within sixty (60) days from the date abandoned.

2. A copy of the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the cabinet program regulating the facility, if applicable.

(2) Abandonment methods and sealing materials for all types of monitoring wells.

(a) The surface casing, monitoring well casing, well screen, filter pack, bentonite seal, and cement shall be removed.

(b) The borehole shall be plugg3ed with sealing material by grout-pipe method or by pressure injection from the bottom of the boring to the top of the borehole, except as provided in paragraph (c) of this subsection.

(c) The borehole may be plugged using the gravitational displacement, or free-flow method to a maximum depth of fifty (50) feet. If this method is employed, the well driller shall use bentonite with a minimum particle size of three-eighths (3/8) inch, and the bentonite shall be used according to the manufacturer's recommendation.

(d) The top two (2) feet of the borehole shall be filled with materials consistent with the surrounding ground surface.

(e) If the well casing cannot be removed, an alternate method of abandonment may be employed, if approved in advance by the cabinet in accordance with the variance process in Section 1(6) of this administrative regulation.

Section 12. Division of Waste Management Program Requirements. (1) Prior to the installation or abandonment of a monitoring well at a facility regulated by the Division of Waste Management, all monitoring-well construction designs and all monitoring-well materials shall be pre-approved by the Division of Waste Management in accordance with the requirements in KRS 224.01-400, 224.01-405, 224.43-010 through 224.43-815, 224.46-012 through 224.46-870, and 224.60-100 through 224.60-160.

(2) The Division of Waste Management regulating program shall be notified at least ten (10) working days prior to a monitoring-well construction, modification, or abandonment so that a cabinet representative may be present at the construction, modification, or abandonment.

(3) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the Division of Waste Management program regulating the facility, if applicable.

Section 13. Documents Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Kentucky Well Construction Record", April 2008;

(b) "Uniform Kentucky Well Maintenance and Plugging Record", April 2008; and

(c) "Kentucky Monitoring Well Variance Request", July[~~April~~] 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Division of Water Web site, www.water.ky.gov.

HENRY "HANK" LIST, Deputy Secretary for
LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 14, 2008

FILED WITH LRC: August 14, 2008 at 11 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, September 9, 2008)

401 KAR 9:020. Section 401 Water Quality Certification fees and certification timetable.

RELATES TO: KRS Chapter 224 **224.10-220, 224.10-100, 224.16-050, 224.16-070, 224.71-100, 33 U.S.C. 1251-1387, EO 2008-507, 2008-531**[~~, 350.060~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220, 224.16-050, 33 U.S.C. **1251,** 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to establish a fee for the cost of processing applications for permits authorized under KRS Chapter 224. KRS 224.10-220 requires the cabinet to establish timetables for the issuance of permits. KRS 224.16-050 authorizes the cabinet to certify, pursuant to 33 U.S.C. 1341, that applicants for a federal permit for the construction or operation of facilities, which may result in a discharge into the waters of the Commonwealth, will comply with the applicable provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251**-1387**. This administrative regulation establishes fees and a certification timetable for processing applications for Section 401 Water Quality Certifications. **EO 2008-**

507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulations is neither more nor less stringent than federal requirements.

Section 1. Definitions. (1) "Agriculture operation" is defined by KRS 224.71-100(1). [~~"Family farm" means one (1) or more tracts of land, used for agricultural purposes, that are held in private ownership by one (1) or more people related by birth or marriage.~~]

(2) "Natural person" means an individual **person** distinguished from a person as defined in KRS 224.01-010**(17)**.

(3) "Personal residence" means a natural person's primary place of abode.

Section 2. Fee Remittance. Fees for water quality certifications shall be remitted to the Kentucky State Treasurer, which shall be for the sole use of the cabinet in administration **of**[~~for~~] the 401 water quality certification program and shall be in addition to[~~any~~] money appropriated by the General Assembly for the use of the cabinet.

Section 3. **Review** Fees for Individual Water Quality Certification **Applications** for Stream Impacts. Fees for the review of individual water quality certification applications for stream impacts shall be as follows:

(1)[~~$100 for an impact of less than 100 linear feet;~~

~~(2) $250 for an impact of 100 to 500 linear feet;~~

~~(3)~~] $1,000 for an impact greater than 500 **linear feet** but less than 1,000 linear feet;

(2)[~~(4)~~] $2,500 for an impact of 1,000 to 5,000 linear feet; and

(3)[~~(5)~~] $5,000 for an impact greater than 5,000 linear feet.

Section 4. **Review** Fees for Individual Water Quality Certification **Applications** for Wetland Impacts. (1) Fees for the review of individual water quality certification **applications** for wetland impacts shall be $500 per acre of impacted wetland.

(2) The fee charged for review of **an** individual water quality certification **application** for wetland impacts shall not exceed $5,000.

Section 5. Exemptions. The following shall be exempt from Section 401 certification fees:

(1) Applications for Section 401 general water quality certifications;

(2) Agriculture operations; and

(3) Personal residences.

Section 6. Timetable for Review of Section 401 Water Quality Certifications.

(1) The cabinet shall issue its final decision on a certification application within 120 calendar days after receipt of a complete application, pursuant to 401 KAR 9:010, Section 1(1), except as provided in subsection (3) of this section.

(2) Within thirty (30) calendar days of initial receipt of an application for a section 401 water quality certification, the cabinet shall issue a notice of deficiency if the application is not complete.

(3) Timetable exclusions. Time periods that shall not be counted towards the cabinet review schedule referenced in subsection (1) of this section include:

(a) Time waiting for the applicant to respond to a notice of deficiency;

(b) Time during which the certification, application, decision, or related matter is the subject of litigation, including administrative hearings or court proceedings, between the cabinet and the applicant;

(c) The public notice period set forth in 401 KAR 9:010;

(d) Time waiting for Section 401 Water Quality Certification fees to be paid after the cabinet's certification decision regarding the application is made; and

(e) Other times as agreed to by the applicant and the cabinet.

[~~Section 5. Fees for General Water Quality Certification. (1) Fees for the review of general water quality certification shall be $100.~~

~~(2) Family farms and personal residences shall be exempt from general water quality certification fees.~~]

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a.m.
CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
Division of Technical Services
(As Amended at ARRS, September 9, 2008)

502 KAR 15:010. Accident reports.

RELATES TO: KRS 189.635
STATUTORY AUTHORITY: KRS 15A.160, 189.635
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department of Public Advocacy.** [~~EO 2003-064, effective December 16, 2003, reorganized the Justice Cabinet and placed the Department of State Police under the Justice and Public Safety Cabinet~~]. KRS 189.635 requires the Department of Kentucky State Police[~~Justice and Public Safety Cabinet~~] to establish a reporting system for[~~all~~] vehicle accidents, including reporting procedures, fee schedule and forms. This administrative regulation establishes the reporting system and fee schedule.

Section 1. The "Uniform Police Traffic **Collision**[~~Accident~~] Report" form published by the Department of Kentucky State Police[~~Justice and Public Safety Cabinet~~] shall be the official vehicle accident report form for all law enforcement agencies in Kentucky.

Section 2. Interpretation and classification of traffic accidents in connection with completion of a Kentucky uniform police traffic accident report form shall follow instructions in the "Kentucky Uniform Police Traffic Accident Report Manual" [~~as~~]published by the Justice and Public Safety Cabinet and instructions not in conflict with the Kentucky manual contained in the "Manual on Classification of Motor Vehicle Traffic **Collision**[Accident]," [~~as~~] published by the National Safety Council.

Section 3. A law enforcement agency whose officers make a traffic accident report **shall be**[~~is~~] the[~~of a traffic accident shall be termed an~~] originating agency with respect to the report and shall retain a copy of the report. Responsibility for providing copies of traffic accident reports to the parties authorized by **KRS 189.635**[~~statute~~] shall remain with the originating agency.

Section 4. A law enforcement agency receiving a vehicle accident report pursuant to KRS 189.635 shall [~~within ten (10) days thereafter~~] forward the original copy of the report to the "CRASH Section, Criminal Identification and Records Branch" Department of Kentucky State Police, Justice and Public Safety Cabinet, Frankfort, Kentucky 40601, in envelopes provided by the cabinet within ten (10) days of receiving the report. The report shall be mailed flat and **shall not be**[~~not~~] folded.

Section 5. Fees for Vehicle Accident Reports. Vehicle Accident Reports may be obtained by authorized parties pursuant to KRS 189.635 upon payment of the following fees:

(1) Paper copies: five (5) dollars; and

(2) Reports obtained via the Kentucky State Police Web site: ten (10) dollars.

Section 6.[~~5.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Uniform Police Traffic Collision Report, Form

KSP 74, Revised 1/2000";

(b) "Kentucky Uniform Police Traffic **Collision**[~~Accident~~] Report Manual, July 2000";

(c) "Manual on Classification of Motor Vehicle Traffic Accidents, 6th edition"; and

(d) "Vehicle accident report envelope, 1st edition".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through[-]Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Commissioner

APPROVED BY AGENCY: July 15, 2008

FILED WITH LRC: July 15, 2008 at 9 a.m.

CONTACT PERSON: Kentucky State Police, Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1636.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
Forensic Laboratory
(As Amended at ARRS, September 9, 2008)

502 KAR 32:010. Centralized database for DNA identification records.

RELATES TO: KRS 17.170,[~~17.171, 17.172, 17.173, 17.174,~~] 17.175, 10 U.S.C. 1565, 42 U.S.C. 14132, 42 U.S.C. 14131

STATUTORY AUTHORITY: KRS 15A.160,[~~17.080,~~] 17.170**(5)**, 17.175[~~, 10 U.S.C. 1565~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS **15A.160 authorizes the secretary to promulgate administrative regulations and direct proceedings and actions for the administration of allows and functions which are vested in the cabinet, except laws and functions vested in the Department for Public Advocacy. KRS 17.170(5) authorizes the Justice and Public Safety cabinet to promulgate administrative regulations concerning the sampling and packaging of DNA. KRS 17.175(6) requires the cabinet**[~~17.175 requires the Kentucky State Police~~] to promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system, including procedures for collection of DNA samples from designated persons for inclusion in the database, and procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples included in the DNA database, and procedures governing DNA database system usage, security, and integrity.

Section 1. Definitions. (1) "Authorized personnel" **is defined by KRS 17.169(2)**[~~means a person who has completed the Department of Kentucky State Police approved training for DNA sample collection~~].

(2)[~~(1)~~] "Biological sample" means any part of the human body from which a person's DNA profile may be extracted such as blood, hair, saliva, tissue, or bone.

(3)[~~(2)~~] "Blood sample" means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile.

(4)(3) "DJJ" means the Department of Juvenile Justice.

(5)[~~(4)~~] "DNA" means deoxyribonucleic acid.

(6)[~~(5)~~] "DNA database" means the database that is part of the federal Combined DNA Index System maintained by the Kentucky State Police under agreement with the Federal Bureau of **Investigation**[~~Investigations~~] and [~~which~~] contains the DNA profiles for qualifying offenders, crime scene specimens, unidentified human remains, missing persons, and close relatives of missing persons as authorized by KRS 17.175.

(7)[~~(6)~~] **"DNA Database Supervisor" means a person designated as the point of contact with the Federal Bureau of Investigation to insure the proper operation and security of the database.**

(8) "DNA profile" **is defined by KRS 17.169(1).**

(9) [~~means a set of DNA identification characteristics which permit the DNA of one (1) person to be distinguishable from that of another person.~~

~~(8)~~][~~(7)~~] "DNA sample" means a biological sample collected for DNA identification purposes.

(10)[~~(9) "DNA Database Supervisor" means a person designated as the point of contact with the Federal Bureau of Investigations to insure the proper operation and security of the database.~~

~~(10)~~][~~(8)~~] "DOC" means the Department of Corrections.

(11)[~~(11)~~][~~(9)~~] "Evidentiary item" means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted.

(12) [~~(12)~~][~~(10)~~] [~~"FBI" means the Federal Bureau of Investigation.~~

~~(13)~~][~~(11)~~] "KSP" means the Kentucky State Police.

(13)[~~(14)~~][~~(12)~~] "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory.

(14)[~~(15)~~][~~(13)~~] "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a DNA [~~blood~~]sample from a qualifying offender by [~~either hypodermic needle extraction or~~] finger prick lancet or **other**[a] biological sample for the purpose of obtaining a DNA profile.

(15)[~~(16)~~][~~(14)~~] "Qualifying offender" means a person who has committed one (1) or more of the criminal or public offenses enumerated in KRS 17.170 - 17.174.

Section 2. Collection of DNA Samples From Qualifying Offenders For Inclusion In DNA Database. (1) In accordance with KRS 17.170(2), DNA samples shall be collected by DOC and DJJ [~~from qualifying offenders in a medically-approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist~~].

(2) In accordance with KRS 17.170**(5)**[~~(2)~~], KSP Central Lab shall provide offender DNA collection kits to DOC[~~,~~] and DJJ for the collection of DNA samples. Each offender DNA collection kit shall contain [~~either a vacutainer tube containing EDTA preservative for obtaining a drawn blood sample by hypodermic needle extraction, or~~]the collection materials necessary to obtain either a blood sample by a finger stick lancet procedure or **other** biological sample. Each offender DNA collection kit shall be secured in protective wrapping materials in a preaddressed, sealable mailing container.

(3) Each offender DNA collection kit for the collection of a[~~blood tube sample shall contain an "Offender DNA Collection Kit Information Sheet (blood tube method)", KSP Form No. 47.~~] finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)", KSP Form No. 47-A and for the "Offender DNA Collection Kit Information Sheet (buccal swab method)", KSP Form No. 47-B). The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample or **other** biological samples on one (1) side of the form. The other side of the Offender DNA Collection Kit Information Sheet shall be completed accurately with as much biographical and offense-related information available concerning the qualifying offender**. The**[~~, and~~][~~shall have space for~~][~~the~~] qualifying offender's left and right thumbprints shall be taken when the sample is collected, except in the instance of amputation or injury to the qualifying offender's thumbs, in which case[~~the~~] another digit shall be printed per the instructions on the Offender DNA Collection Kit Information Sheet. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the DNA[~~blood~~] sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender. The DNA sample shall be taken by DOC or DJJ authorized personnel and **shall not be**[~~not~~] self-collected by the qualifying offender.

(4) Following[~~Immediately following~~] collection of a blood or **other** biological sample from a qualifying offender, the offender DNA collection kit shall be sealed. As soon as practical following collection, the offender DNA collection kit shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail.

Section 3. Collection of Missing Person DNA Samples for In-

clusion in DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted which is submitted by a law enforcement agency to the KSP Central Lab shall be accompanied by a completed KSP "Request For Examination," KSP Form No. 26.

(2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a DNA[~~blood~~] sample from children of the missing person and the children's other parent may also be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 4. Collection of DNA Samples from Unidentified Bodies for Inclusion In DNA Database. (1) A biological sample from the unidentified body, submitted by a law enforcement agency to the laboratory, shall be accompanied by a completed KSP Form No. 26.

(2) If practical, the biological sample shall be a blood sample, a deep muscle tissue sample, or a long bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable if one (1) of the above-enumerated samples cannot be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 5. Collection of DNA Samples from Crime Scenes for Inclusion in DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26.

(2) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 6. Quality Assurance Standards for DNA Database. (1) The proficiency of examiners conducting DNA analysis for the database shall be tested twice a year in accordance with 42 U.S.C. 14132(b)(2) [~~(1)~~].

(2) Only DNA profiles obtained as a result of DNA analysis shall be entered in the DNA database.[~~conducted in conformance with the quality assurance standards set forth in the KSP Forensic Laboratories' "The Forensic Biology/DNA Database Quality Assurance Manual"~~]

Section 7. DNA Database Usage, Access and Security. (1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.175.

(2) DNA database shall only be accessed as approved by the DNA Database Supervisor by Kentucky State Police employees who show proficiency in DNA testing and the DNA database, maintain continuing education hours pursuant to KSP forensic lab policy and federal requirements. The DNA Database Supervisor may provide KSP interns with limited access to the DNA database pursuant to KSP forensic lab policy.

(3) All data and information generated by the DNA Database are confidential.

(4) Searches shall be conducted for law enforcement, criminal justice agencies or governmental forensic science laboratories approved by the DNA Database Supervisor pursuant to federal guidelines.

(5) Access to the DNA Database shall be through computers that are utilized solely for accessing the DNA Database by authorized users and are located in areas secured by the Kentucky State Police.[~~security, employee access, and limitations on DNA database usage shall be governed by the KSP Forensic Laboratories' "DNA Database Manual"~~]

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~"Offender DNA Sample Information Sheet (blood tube method)," KSP Form No. 47, May 2003;~~

~~(b)~~] "Offender DNA Collection Kit Information Sheet (finger prick lancet method)" KSP Form No. 47-A, January 2006;

(b)[~~(c)~~] "KSP Request For Evidence Examination," KSP Form No. 26, March 2001;[~~"Offender DNA Sample Information Sheet (blood tube method)," KSP Form No. 47, May 2003;~~

~~(d) KSP Forensic Laboratories' "The Forensic Biology/DNA Database Quality Assurance Manual," January 19, 2007;~~

~~(e) KSP Forensic Laboratories' "DNA Database Manual", January 8, 2007.~~]

(c) "Offender DNA Collection Training Program for Trainers", KSP Form No. 139, June 2008;

(d) "Offender DNA Collection Training Program for Collectors", KSP Form No. 140, June 2008;

(e) "Offender DNA Collection Training Program", KSP Form No. 141, June 2008; and

(f) "Offender DNA Collection Kit", KSP Form No. 47-B, May 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KSP Central Forensic Laboratory, 100 Sower Boulevard, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, COMMISSIONER

APPROVED BY AGENCY: June 27, 2008

FILED WITH LRC: July 1, 2008 at 10 a.m.

CONTACT PERSON: Emily Perkins, Kentucky State Police, 919 Versailles Rd., Frankfort, Kentucky 40601, phone (502) 695-6300, fax (502) 573-1636.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Drivers Licensing
(As Amended at ARRS, September 9, 2008)

601 KAR 13:070. Requirements for minor driver licensing applicant and compliance with KRS 159.051[~~, Compliance verification for a minor~~].

RELATES TO: KRS 159.030,159.040, 159.051, 159.160, **186.412,** 186.440, 186.450, 186.470, 186.560

STATUTORY AUTHORITY: KRS 186.400(1), **186.412, 186.440(3), 185.560(7)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.400(1) authorizes the Transportation Cabinet to promulgate administrative regulations for the enforcement of **KRS 186.400 to 186.640. KRS 186.560(7) requires the cabinet to revoke the license of any operator of a motor vehicle upon receiving notification that the operator is under age eighteen (18) and has dropped out of school or is academically deficient, as defined by KRS 159.051. KRS 186.440(3) requires persons under the age of eighteen (18) to present proof of complying with the requirements for obtaining a driver's license and authorizes the cabinet to require any other information by administrative regulation. This administrative regulation establishes requirements for a minor driver licensing applicant and compliance with KRS 159.051.** [~~driver licensing laws. This administrative regulation establishes the requirements of the notification to be submitted by a minor driver licensing applicant to the Circuit Court Clerk and the notification to be sent by a school superintendent or designee to the cabinet if a minor withdraws from school or is academically deficient. This administrative regulation is necessary to enforce KRS 159.051 and 186.560(7).~~]

Section 1. Definitions. [~~(1)~~]"Minor" means a person under the age of eighteen (18) years.

[~~(2) "Participating school district" means a school district which~~

~~the Department of Education has reported to the Transportation Cabinet as having an alternative education program which complies with 704 KAR 7:100.~~]

Section 2. Minor's Application for Driving Privilege [~~for Kentucky~~][~~Public, Private, or Private~~] School Students [~~being Schooled at Home~~]. (1) **A minor who is applying for a Kentucky original learner's permit, a transfer learner's permit, or a transfer operator's license shall submit to the circuit court clerk:**

(a) A "Driver License-ID Card Application Form TC 94-30";

(b) An original or certified copy of the minor's birth certificate; and

(c) All other information required by KRS 186.412 to obtain a driver's license.[~~A minor attending a public or nonpublic school~~][~~private school or a private school student being schooled at home~~] [~~residing within the boundaries of a participating school district~~] [~~who is applying from a Kentucky~~][~~an~~][~~original learner's permit, a transfer learner's permit, or a transfer operator's license shall submit to the circuit court clerk:~~

~~(a)~~][~~Proof of graduation from high school;~~

~~(b) Proof of having received his General Equivalency Diploma;~~

~~(c)~~][~~A school compliance~~][~~enrollment~~][~~verification form for driver licensing, executed within the preceding sixty (60) days, which contains the following:~~

~~1. Applicant's full name;~~

~~2. The last four (4) digits of his or her Social Security or~~][~~driver's license~~][~~number;~~

~~3. Date of birth;~~

~~4. Name and address of school attended;~~

~~5.~~][~~4.~~][~~Name~~] [~~and address~~][~~of the school district;~~

~~6.~~[~~5.~~][~~Signature and title of the designated school representative~~][~~official~~][~~completing the form;~~

~~7.~~][~~6.~~][~~Statement that the minor is attending and successfully participating in school as defined in KRS 159.051;~~

~~8.~~][~~For private school students being schooled at home, the signature of the Public School Director of Pupil Personnel or the District Contact for No Pass No Drive certifying that the student is registered and in compliance with KRS 159.160;~~

~~9.~~][~~7.~~][~~Embossed seal of the school if applicable;~~][~~district; and~~][

~~9.~~][~~10.~~][~~8.~~][~~Date of execution of the form; and~~ [~~or~~]

~~10.~~][~~11.~~][~~Expiration date of the form; or~~

~~(b) Proof of graduation from high school; or~~

~~(c) Proof of having received his or her General Equivalency Diploma.~~

~~(d) A student enrolled in a home school program shall obtain the signature of the Director of Pupil Personnel for the local school district or the district contact for No Pass No Drive to verify that the student is enrolled in a home school program pursuant to KRS 159.160.~~

~~(2) The minor's application for a driver's license shall be submitted to the circuit court clerk on the Kentucky Transportation Cabinet form entitled "Driver License-ID Card Application Form TC 94-30".~~

~~(3) The statement required by subsection (1)(a) of this section shall be submitted to the circuit court clerk on the Department of Education form entitled "School Compliance Verification for driver's Licensing, KRS 159.051 (No Pass/No Drive Statue)".~~

~~(4) Upon request by the home school a school compliance verification form for driver licensing shall be mailed by the school district of residence to the home school for any student who will turn sixteen (16) or seventeen (17) during the school year. A registered home school student may pick up the verification form from the school district of residence.~~][~~to a registered private school student being schooled at home by the public school district of residence upon the school notifying the district of a student who will turn sixteen (16) or seventeen (17) during the school year. The private school student being schooled at home may pick up the school compliance verification for driver licensing in the public school district of residence.~~]

[~~(5) The signature of parents or guardians of home~~][~~private~~][~~school students~~][~~being schooled at home~~][~~on the school compliance verification form for driver licensing and on the driver license ID card application form shall act as certification that the student is enrolled in a home school program~~][~~an authorized private school student being schooled at home~~][~~and is in compliance with the requirements of KRS 159.051.~~

~~Section 3. Minor's Application for Driving Privilege for Opt-of-School Students. (1) A minor attending school out-of-state who is applying for a Kentucky original learner's permit, a transfer operator's license shall submit to the circuit court clerk a school compliance verification form for the driver licensing, executed within the preceding sixty (60) days, obtained by mail or in person from the school board in the county in which the student resides or from the Department of Education, which contains the following:~~]

[~~(d) A statement from his parent or guardian that the minor is being schooled at home. The statement shall contain the following:~~]

[~~(a)~~ [~~1.~~] ~~Applicant's full name;~~

~~(b) The last four (4) digits of his or her~~][~~2.~~] [~~Social Security~~][~~or driver's license~~][~~number;~~

~~(c) Date of birth;~~

~~(d)~~ [~~3.~~] ~~Parent or guardian's~~][~~full name, address, and~~][~~signature verifying that the out-of-state~~][~~schooled~~] [~~student is in compliance with KRS 159.051;~~

~~(e) Signature of the Public School District Director of Pupil Personnel or the District Contact for No Pass No Drive certifying that the out of state~~][~~school~~][~~student is registered and in compliance with KRS 159.160;~~

~~(f)~~][~~4. Statement executed within the preceding sixty (60) days that the minor is successfully participating in home school as defined in KRS 159.051; and~~

[~~5.~~] [~~Date the statement was executed; and~~

~~(g) Expiration date of the form.~~

~~(2) The minor's application for a driver's license shall be submitted to the circuit court clerk on the Kentucky Transportation Cabinet form entitled "Driver License-ID Card Application Form TC 94-30".~~

~~(3) The statements required by subsection (1)~~[~~(c) or (d)~~] ~~of this section shall~~ [may] ~~be submitted to the circuit court clerk on the Department of Education form entitled "School Compliance Verification For Driver Licensing~~] [~~School Enrollment Verification or Reinstatement~~][, ~~KRS 159.051 (No Pass/No Drive Statute)~~"].

Section **3.**[~~4.~~][~~3.~~] Notification of Noncompliance with KRS 159.051. (1)**(a) In accordance with the requirements of KRS 159.051(2),** a participating school[~~district superintendent or designee, a home school, or an out-of-state school~~]shall submit a notification in electronic[~~or written~~] form [~~statement~~] to the Transportation Cabinet **through the No Pass No Drive electronic system** to report that a minor is not in compliance with KRS 159.051.

(b) Registration information for the No Pass No Drive electronic system may be obtained from:

1. The Transportation Cabinet, Division of Driver Licensing, 200 Mero Street, Frankfort, Kentucky 40622; or

2. The Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40622.

(2)(a) If electronic form is unavailable, the notification may be submitted in written form to the Transportation Cabinet, Division of Driver Licensing, 200 Mero Street, Second Floor, Frankfort, Kentucky 40622.

(b)[~~A private home school or out-of-state school shall notify the Transportation Cabinet that a minor is not in compliance and may do so by paper.~~] The notification [~~statement~~] shall contain the following information:

1.[~~(a)~~] Minor's full name;

2.[~~(b)~~] Last four (4) digits of minor's Social Security number or driver's license number;

3.[~~(c)~~] Name and address of the [~~participating~~] school [~~district~~];

4.[~~(d)~~] Designated school representative's superintendent's name and title;

5.[~~(e)~~] Statement that the minor is not in compliance with KRS 159.051; and

6.[~~(f)~~] [~~Embossed seal of the school district; and~~

~~(g)~~] Date of execution [~~of the statement.~~

~~(2) The~~][~~private home school or out-of-state school may send the~~] notification may be sent [~~by paper~~] [~~This statement shall be sent~~][~~to the Transportation Cabinet, Division of Driver Licensing,~~

~~200 Mero Street~~[~~501 High Street~~][~~, Second Floor,~~][~~State Office Building~~][~~, Frankfort, Kentucky 40622~~].

[~~(3) This statement may be submitted on the Department of Education form entitled "Driver Licensing Suspension Form, KRS 159.051 (No Pass/No Drive Statute).~~]

Section **4.**[~~5.~~][4.]Application After Compliance with KRS 159.051. (1)**(a) In accordance with the requirements of KRS 159.051(4), if**[~~If~~] a minor becomes eligible to reapply for driving privilege after one (1) full semester of compliance [~~by complying~~] with KRS 159.051, the school [~~district~~] shall submit [~~prepare~~] a compliance notice in electronic [~~or written~~] form to the Transportation Cabinet **through the No Pass No Drive electronic system.**

(b) Registration information for the No Pass No Drive electronic system may be obtained from:

1. The Transportation Cabinet, Division of Driver Licensing, 200 Mero Street, Frankfort, Kentucky 40622; or

2. The Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40622.

(2)(a) If electronic form in unavailable, the compliance notification may be submitted in written form to the Transportation Cabinet, Division of Driver Licensing, 200 Mero Street, Second Floor, Frankfort, Kentucky 40622.

(b) [~~A private home school or out-of-state school may submit the notification by paper.~~] The compliance notice shall contain [~~containing~~] the following information:

1.[~~(a)~~] Minor's full name;

2.[~~(b)~~] Last four (4) digits of minor's Social Security number or driver's license number;

3.[~~(c)~~] Name and address of the school [~~district~~];

4.[~~(d)~~] Designated school representative's name and title [~~Name and address of the school~~];

5.[~~(e)~~] [~~Signature and title of the school district official executing the compliance notice;~~

~~(f)~~] Statement that the minor is in compliance with KRS 159.051;

6.[~~(f)~~] [~~(g) Embossed seal of the school district; and~~

~~(h)~~] Date of execution.

[~~(2) The~~][~~private home school or out-of-state school may send the~~] [~~notification shall be sent~~][~~notice shall be sent~~][~~to the Transportation Cabinet, Division of Driver Licensing, 200 Mero Street~~][~~501 High~~] [~~Street, Second Floor,~~][~~State Office Building~~][~~, Frankfort, Kentucky 40622.~~]

[~~(3) The minor may submit a copy of the notice to the circuit court clerk in his county of residence.~~

~~(4) The notice may be submitted on the Department of Education's form entitled "Driver Licensing School Enrollment Verification or Reinstatement, KRS 159.051 (No Pass/No Drive Statute)".~~

~~Section 5. Counties with Multiple School Districts. (1) In a county with multiple school districts, if at least one (1) is a participating school district, then each minor driver licensing applicant shall:~~

~~(a) Comply with Section 2 of this administrative regulation; or~~

~~(b) Provide to the circuit court clerk a notice that he resides in a district which does not have an approved alternative education program. The notice shall contain the following:~~

~~1. Full name of minor;~~

~~2. Social Security or driver's license number of the minor;~~

~~3. Name and address of the school district;~~

~~4. Statement that the school district is not a participating school district;~~

~~5. Name and title of school district official completing the statement;~~

~~6. Embossed seal of the school district; and~~

~~7. Date of completion of the statement.~~

~~(2) The statement referred to in subsection (1)(b) of this section may be submitted on the Department of Education form entitled "School Districts Not Participating, KRS 159.051 (No Pass/No Drive Statute)".~~]

Section 6. Incorporation [~~Material Incorporated~~] by Reference. (1)**"Driver License-ID Card Application Form TC 94-30", September 2008. Kentucky Transportation Cabinet, is incorporated by reference.**[~~The following material is incorporated by reference:~~

~~(a) "School Compliance Verification for Driver Licensing,~~][~~Driver Licensing School Enrollment Verification or Reinstatement~~][~~, KRS 159.051 (No Pass/No Drive Statute)" form, (December~~][~~September~~] [~~2007~~][~~October 1996~~][~~), Department of Education; and~~

~~(b) "Driver License-ID Card Application Form TC 94-30" (August 2007), Kentucky Transportation Cabinet.~~]["~~School Districts Not Participating, KRS 159.051 (No Pass/No Drive Statute)", (March 1995), Department of Education; and~~

~~(c) "Driver Licensing Suspension Form, KRS 159.051 (No Pass/No Drive Statute)" (October 1996), Department of Education.~~]

(2) This material may be inspected, copied subject to applicable copyright law, or obtained at the **Transportation Cabinet, Division of Driver Licensing, 200 Mero Street, Frankfort, Kentucky 40622**[~~Department of Education, Dropout Prevention Branch~~][~~Student/Family Support Services,~~][~~Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601~~], Monday through Friday, 8 a.m. to 4:30 p.m.

DANA FUGAZZI, Staff Attorney

APPROVED BY AGENCY: September 12, 2007

FILED BY LRC: September 12, 2007 at 4 p.m.

CONTACT PERSON: Dana Fugazzi, Staff Attorney Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-21-02, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

EDUCATION CABINET
Department for Libraries and Archives
Public Records Division
(As Amended at ARRS, September 9, 2008)

725 KAR 1:030. Scheduling public records for retention and disposal; procedures.

RELATES TO: KRS **171.450**[~~Chapter 171~~]

STATUTORY AUTHORITY: KRS 171.450, 171.580

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules **of public records proposed for disposal and to establish procedures for the disposal or destruction of public records authorized for disposal or destruction. KRS 171.580 authorizes the department to accept for deposit in the State Archives the records of any state or local agency that are determined by the department to have sufficient historical or other value to warrant their procedures for the scheduling of public records for retention and disposal and for the uniform destruction of public records**[~~for the disposal or destruction of public records authorized for disposal or destruction. KRS 171.580 authorizes the department to accept for deposit in the State Archives the records of any state or local agency that are determined by the department to have sufficient historical or other value to warrant their continued preservation KRS 171.450(2) requires the department to enforce the provisions of KRS 171.410 to 171.740 by appropriate rules and regulations. This administrative regulation establishes uniform procedures for the scheduling of public records for retention and disposal and for the uniform destruction of public records~~].

Section 1. State and local agencies shall follow the procedures for scheduling public records for retention and disposal described in Records Retention Scheduling: A Procedural Guide.

Section 2. State and local agencies shall follow the procedures for disposing of eligible public records described in Destruction of Public Records: A Procedural Guide.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Records Retention Scheduling: A Procedural Guide", July 2008 [~~September 2007~~]; and

(b) "Destruction of Public Records: A Procedural Guide", July 2008 [~~September 2007~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road,

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONKST, State Librarian and Commissioner
APPROVED BY AGENCY: July 11, 2008
FILED WITH LRC: July 11, 2008 at 3 p.m.
CONTACT PERSON: Barbara Teague, Public Records Branch Manager, P. O. Box 537, Frankfort, Kentucky 40602, phone (502) 564-8300, ext. 252, fax (502) 564-5773.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, September 9, 2008)

787 KAR 1:190. Recoupment and recovery.

RELATES TO: KRS 341.415
STATUTORY AUTHORITY: KRS 151B.020, 341.115(1), 341.415(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.415(1) limits recoupment and recovery in the discretion of the secretary and in cases of benefits overpaid as a result of "office error". This administrative regulation establishes the actions and instances which shall constitute "office error" and which shall otherwise limit [~~for the purpose of~~] recovery and recoupment.

Section 1. The following shall constitute "office error" in the payment of benefits:
(1) Errors in computing the benefit rate;
(2) Incorrect weekly payment due to a failure to consider **a** deductible amount that was properly reported by a claimant;
(3) Payment beyond the expiration of the benefit year;
(4) Payment in excess of the maximum benefit amount;
(5) Payment under an incorrect program;
(6) Retroactive notice of nonmonetary determinations, except **that** a determination that the claimant has committed fraud shall not be considered office error;
(7) Monetary redeterminations;
(8) Payment during a period of disqualification;
(9) Payment to a wrong claimant; or
(10) Erroneous payments resulting from human error in the data entry process.

Section 2. Overpayments that result from office error or that in the discretion of the secretary shall be collected solely through deduction from future benefits shall not be subject to the filing of a lien or reporting to credit reporting agencies.

RUSSELL L. SALSMAN, Executive Director
APPROVED BY AGENCY: July 7, 2008
FILED WITH LRC: July 11, 2008 at 11 a.m.
CONTACT PERSON: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky 40621, phone (502) 564-2900, fax (502) 564-5502.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, September 9, 2008)

787 KAR 2:020. Confidentiality of records of the Office of Employment and Training[~~Department for Employment Services~~].

RELATES TO: KRS **151B.280(3),** 195.020, EO 2008-530 [~~195.040~~]
STATUTORY AUTHORITY: KRS 151B.280 [~~151B.020, 341.115~~]
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 151B.280(3)(a) requires the secretary of the Education Cabinet to promulgate**[~~The Education and [Cabinet for] Workforce Development is authorized by KRS 151B.280 [151B.020] to develop and to adopt~~] administrative regulations to protect the confidential nature of records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet. Executive Order 2008-530, effective June 16, 2008, reorganized the Education Cabinet and changed the name of the cabinet to the new Education and Workforce Development Cabinet. **This administrative regulation establishes which**[~~The function of this administrative regulation is to designate certain~~] records of the cabinet's Office of Employment and Training **shall be**[~~Department for Employment Services~~] as confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. **The employment and service records identified in this section shall be confidential and shall not be subject to disclosure, except as provided in KRS 151B.280(3)**[~~The cabinet has determined the following employment and service records to be confidential and not subject to disclosure~~]:
(1) Foreign Labor Certification forms relating to the H-2A agricultural **or**[~~and~~] H-2B nonagricultural programs:
(a) **ETA 750**[~~ETA-750~~] Part A, Application for Alien Employment Certification;[~~.~~]
(b) **ETA 750**[ETA-750] Part B, **Statement of Qualifications of Alien**;
(c) **ETA 790**[~~ETA-790~~], Agricultural and Food Processing Clearance Order;
(d) ETA-9127, Foreign Labor Certification Quarterly Activity Report;
(e) Wage Survey Interview Record;
(f) H-2A (1), Employer-Furnished Housing and Facilities;
(g) Migrant and Seasonal Agricultural Worker Protection Act,[~~with~~] Housing, Safety and Health Check List;
(h)[~~(g)~~] H-2A Field Audit;
(i) H-2A #2[~~(h) H-2A(2)~~], Housing Inspection;
(j)[~~(i)~~] Kentucky H-2A Alien Labor Certification Program, Customer Satisfaction Survey;
(k) Kentucky[~~(j)~~] Office of Employment and Training Prevailing Wage Information Request;
(l) Kentucky[~~(k)~~] Office of Employment and Training Transmittal of Application for Alien Employment Certification; **and**
(m) Kentucky[~~(l)~~] Office of Employment and Training Recruitment Notification;[~~.~~]
(2) Work opportunity tax credit:
(a) Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit;
(b) **ETA Form 9061**[~~ETA-9061~~], Individual Characteristics Form Work Opportunity Tax Credit; **and**
(c) **ETA Form 9063**[~~ETA-9063~~], Employer Certification Work Opportunity Tax Credit;[~~.~~]
(3) Trade Adjustment Assistance and Trade Re-Employment Act:
(a) TAA/TRA-855, Request for Determination of Entitlement to TAA/TRA;[~~.~~]
(b) TAA/TRA-855A, Request for Employment Information;
(c) TAA/TRA-858, Request for Occupational/Remedial Training and Allowances While in Training;
(d) **TAA-858B,**[~~TAA/TRA-858B~~];
(e) ETA-9042A, Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA);
(f) TAA Certification of Training Waiver;
(g) ATAA-400A, Verification of Employment;
(h) ATAA-301, Verification of Employment for Monthly Wage Supplement **ATAA**;
(i) ATAA-400, Request for Alternative Trade Adjustment Assistance **(ATAA)**;
(j) ATAA-401, ATAA Trade Certified Employer Information; **and**
(k) Kentucky HCTC-100, Request for Temporary KY-HCTC Bridge **Grant**[~~Gap~~] Payment;[~~.~~]

(4) Employ Kentucky Operating System (EKOS):
(a) Customer Services-Agency Information Screen;
(b) Customer Services-Achievement Objectives Screen;
(c) Customer Services-Services Screen;
(d) Customer Services-Service History Screen;
(e) Customer Services-Enrollments Screen;
(f) Customer Services-Outcomes Screen;
(g) Customer Services-Comments Screen;
(h) Customer Services-Audit Screen;
(i) Customer Services-Lit/Num Testing Screen;
(j) Customer Services- Follow-Up Screen;
(k) Customer Services-Youth ISS Screen;
(l) Customer Detail-**Gen. Info**[~~General Information~~] Screen;
(m) Customer Detail-**Add'l Info** [~~Additional Information~~] Screen;
(n) Customer Detail-Programs & Public Assistance Screen;
(o) Customer Detail-Programs & Public Assistance Screen II;
(p) Customer Detail-Objective Screen;
(q) Customer Detail-Work **His.**[~~History~~] Screen;
(r) Customer Detail-Ed/Lic Screen;
(s) Customer Detail-Skills Screen;
(t) Customer Detail-Saved Searches Screen;
(u) Customer Detail-Activities Screen;
(v) Customer Detail-Comments Screen;
(w) Customer Detail-Tests Screen;
(x) Customer Detail-Tests (GATB) Popup Screen;
(y) Customer Detail-e3 **Info**[~~Information~~] Screen;
(z) **Comp Assess**[~~Comprehensive Assessment~~]-Employment Screen;
(aa) **Comp Assess**[~~Comprehensive Assessment~~]-Education Screen;
(bb) **Comp Assess**[~~Comprehensive Assessment~~]-Financial Screen;
(cc) **Comp Assess**[~~Comprehensive Assessment~~]-Family Screen;
(dd) **Comp Assess**[~~Comprehensive Assessment~~]-Health Screen;
(ee) **Comp Assess**[~~Comprehensive Assessment~~]-Treatments Screen;
(ff) **Comp Assess**[~~Comprehensive Assessment~~]-Legal Screen;
(gg) **Comp Assess**[~~Comprehensive Assessment~~]-Housing Screen;
(hh) **Comp Assess**[~~Comprehensive Assessment~~]-Transportation Screen; **and**
(ii) **Comp Assess**[~~Comprehensive Assessment~~]-Comments Screen; **and**
(5) Workforce Investment Act **Title1,**[~~(WIA):~~] W.I.A. – 20, Eligibility and Verification.

Section 2. [~~The following documents and records pertaining to the cabinet's implementation of the Job Training Partnership Act (JTPA) in Kentucky shall be confidential and shall not be disclosed by the Department for Employment Services.~~
~~(1) JTPA-1, application form.~~
~~(2) JTPA-20, verification of eligibility form and related source documents.~~
~~Section 2. Department for Employment Services records other than JTPA. The Cabinet for Workforce Development, Department for Employment Services has determined the following records to be confidential and not subject to disclosure:~~
~~(1) ES-507, temporary application form for selected employers.~~
~~(2) ES-508, job referral card.~~
~~(3) ES-511, application card.~~
~~(4) ES-514, job order form.~~
~~(5) ES-518, test record card.~~
~~(6) ES-519, test record card.~~
~~(7) ES-614, counseling record and employability plan.~~

~~Section 3.~~] Access to records of the Division of Unemployment Insurance shall be governed by the provision of KRS 341.190.

Section 3.[~~4.~~] Sharing of information as authorized by law.[~~Nothing in this administrative regulation shall prohibit the sharing of~~]Confidential information **shall be shared only** in accordance with KRS[~~194.060(2) and~~] 341.190.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) **ETA 750**[~~ETA-750~~] Part A, "Application for Alien Employment Certification", (rev. 11/07);
(b) **ETA 750**[~~ETA-750~~] Part B, **Statement of Qualifications of Alien"**, (rev. 11/07);
(c) **ETA 790**[~~ETA-790~~], "Agricultural and Food Processing Clearance Order", (rev. 7/04);
(d) ETA-9127, "Foreign Labor Certification Quarterly Activity Report", (rev. 8/05);
(e) "Wage Survey Interview Record", (rev. 8/07);
(f) H-2A (1), "Employer-Furnished Housing and Facilities", **rev. 5/02;**
(g) "Migrant and Seasonal Agricultural Worker Protection Act,[~~with~~] Housing, Safety and Health Check List", **rev. 4/04**[~~(rev. 5/02)~~];
(h)[~~(g)~~] H-2A, "Field Audit", (rev. 10/04);
(i) Kentucky H-2A #2[~~(h) H-2A(2)~~], "Housing Inspection", (rev. 6/02);
(j)[~~(i)~~] Kentucky H-2A, "Alien Labor Certification Program, Customer Satisfaction Survey," (rev. 8/07);
(k) Kentucky[~~(j)~~] "Office of Employment and Training Prevailing Wage Information Request", (rev. 12/06);
(l) Kentucky[~~(k)~~] "Office of Employment and Training Transmittal of Application for Alien Employment Certification", **rev. 5/2008**[~~(rev. 7/04)~~];
(m) Kentucky[~~(l)~~] "Office of Employment and Training Recruitment Notification", (rev. 5/08);
(n)[~~(m)~~] Form 8850, "Pre-Screening Notice and Certification Request for the Work Opportunity Credit", (rev. 6/07);
(o) ETA Form 9061[~~(n) ETA-9061~~], "Individual Characteristics Form Work Opportunity Tax Credit", (rev. 12/06);
(p) ETA Form 9063[~~(o) ETA-9063~~], "Employer Certification Work Opportunity Tax Credit", (rev. 12/06);
(q) TAA/TRA-855[~~(p) TAA/TRAA-855~~], "Request for Determination of Entitlement to **TAA/TRA**[~~TAA/TRAA~~]", (rev. 4/06);
(r) TAA/TRA-855A[~~(q) TAA/TRAA-855A~~], "Request for Employment Information", (rev. 1/05);
(s) TAA/TRA-858[~~(r) TAA/TRAA-858~~], "Request for Occupational/Remedial Training and Allowances While in Training", (rev. 8/05);
(t) TAA-858B[~~(s) TAA/TRAA-858B~~], (rev. 8/05);
(u)[~~(t)~~] ETA-9042A, "Petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA)", (rev. 11/05);
(v)[~~(u)~~] "TAA Certification of Training Waiver", (rev. 4/07);
(w)[~~(v)~~] ATAA-400A, "Verification of Employment", (rev. 4/08);
(x)[~~(w)~~] ATAA-301, "Verification of Employment for Monthly Wage Supplement **ATAA**", (rev. 4/08);
(y)[~~(x)~~] ATAA-400, "Request for Alternative Trade Adjustment Assistance **(ATTA)**", (rev. 4/08);
(z)[~~(y)~~] ATAA-401, "ATAA Trade **Certified**[~~Certification~~] Employer Information", (rev. 4/08);
(aa)[~~(z)~~] Kentucky HCTC-100, "Request for Temporary KY-HCTC **Bridge Grant Payment**", (rev. 1/08);
(bb)[~~(aa)~~] "Customer Services-Screens 1 through 11", (rev. 5/02);
(cc)[~~(bb)~~] "Customer Detail-Screens 1 through 14", (rev. 5/02);
(dd) "Comp Assess[~~(cc) "Comprehensive Assessment~~]-Screens 1 through 10", **5/02; and**[~~(rev. 5/02), and~~]
(ee) Workforce Investment Act Title 1,[~~(dd)~~] "W.I.A.-20, Eligibility and Verification", (rev. 10/06).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Employment and Training, 275 E. Main Street, 2nd Floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RUSSELL L. SALSMAN, Executive Director
APPROVED BY AGENCY: July 7, 2008
FILED WITH LRC: July 11, 2008 at 11 a.m.
CONTACT PERSON: Terry Brogan, Assistant Director, Office

of Employment and Training, 275 East Main Street, 2-WA, Frankfort, Kentucky 40621, phone (502) 564-3906, fax (502) 564-7459.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, September 9, 2008)

806 KAR 17:310. Prompt payment of claims reporting requirements.

RELATES TO: KRS 304.17A-005, 304.17A-700-304.17A-730, 304.17C-010-304.17C-090, 304.99-123, 2008 Ky Acts ch. 127, Part XII, secs. 18-20

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-722(1)[~~, 304.17C-090(2)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-722(1) requires the office to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering a health benefit plan. [~~An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall submit reports as required under KRS 304.17A-722 pursuant to KRS 304.17C-090(2).~~] EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes the reporting requirements of an insurer offering a health benefit plan and an insurer offering a limited health service benefit plan for the provision of dental-only benefits.

Section 1. Definitions. (1) "Adjudicate" is defined in KRS 304.17A-700(1).

(2) "Claims payment time frame" means the period of time established in KRS 304.17A-702(1).

(3) "Clean claim" is defined in KRS 304.17A-700(3).

(4) "Commissioner" means Commissioner of Insurance.

(5) "Contested claim" means a clean claim contested in accordance with KRS 304.17A-706(1).

(6) "Department" means Department of Insurance.[~~(5) "Executive director" means Executive Director of Insurance.~~]

(7)[~~(6)~~] "Health care provider" or "provider" is defined in KRS 304.17A-700(9), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 18.

(8)[~~(7)~~] "Insurer" is defined in KRS 304.17A-005(27).

(9)[~~(8)~~] "Limited health service benefit plan" is defined in KRS 304.17C-010(5).

[~~(9) "Office" means the Kentucky Office of Insurance.~~]

(10) "Paid" means the act of payment by an insurer offering a health benefit plan or a limited health service benefit plan for the provision of dental-only benefits, its agent or designee of the amount required by KRS 304.17A-702(2)(a) or other appropriate amount on the payment date as determined pursuant to 806 KAR 17:360, Section 3(1).

Section 2. Insurer Offering a Health Benefit Plan Reporting Requirements. (1) Within the time frames established in KRS 304.17A-722(3), an insurer offering a health benefit plan shall submit to the department[~~office~~], on a calendar quarter basis, a report on the prompt payment of claims.

(2) If an insurer is unable to meet a timeframe for reporting on the prompt payment of claims as established in this administrative regulation because of unforeseen computer system problems, an extension of time may be granted upon written request to the commissioner[~~executive director~~].

(3) The report required pursuant to subsection (1) of this section shall contain the prescribed information and data elements, as applicable, in the electronic format as prescribed by the Prompt Payment Reporting Manual, HIPMC-CP-3, which is incorporated by reference in 806 KAR 17:005[~~(09/05)~~].

(4) At the time of submittal, the truth and accuracy of the report required pursuant to this section shall be certified by an executive officer of the insurer by completing the Affidavit, HIPMC-CP-2 [~~(09/05)~~].

Section 3. Insurer Offering a Limited Health Service Benefit Plan Reporting Requirements. An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall:

(1) Annually,[~~Beginning on June 30, 2007, and~~] no later than June 30 of each year [~~thereafter~~], submit a[~~an annual~~] report to the office on the prompt payment of claims as established under KRS 304.17C-090(2); and

(2) Except for Section 2(1) of this administrative regulation, be subject to the requirements of an insurer offering a health benefit plan as established in this administrative regulation.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Prompt Payment Reporting Manual, HIPMC-CP-3" (7/2008)[~~(09/05)~~]; and

(b) "Affidavit, HIPMC-CP-2 (7/2008)[~~(09/05)~~]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[~~Office~~] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's[~~office's internet~~] Web site at http://doi.ppr.ky.gov.

JOHN BURKHOLDER, Acting Commissioner
ROBERT D. VANCE Secretary

APPROVED BY AGENCY: July 14, 2008

FILED WITH LRC: July 15, 2008 at 10 a.m.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, September 9, 2008)

806 KAR 17:360. Prompt payment of claims.

RELATES TO: KRS 304.17A-005, 304.17A-700, 304.17A-702(1), 304.17A-704, 304.17A-706, 304.17A-708(1), 304.17A-720, 304.17A-730, 304.17C-090, 304.99-123, 2008 Ky Acts ch. 127, Part XII, sec. 18-20

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-722(1)[~~, 304.17C-090~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17A-722(1) requires the office to promulgate administrative regulations establishing reporting requirements regarding the prompt payment of claims by insurers offering health benefit plans.[~~An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall be subject to the provisions of KRS 304.17A-700 to 304.17A-730, except as provided in KRS 304.17C-090.~~] EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation establishes requirements for insurers offering health benefit plans and insurers offering limited health service benefit plans for the provision of dental-only benefits.

Section 1. Definitions. (1) "Clean claim" is defined in KRS 304.17A-700(3).

(2) "Commissioner" means Commissioner of Insurance.

(3) "Covered person" is defined in KRS 304.17A-700(5).

(4) "Department" means Department of Insurance.[~~(3) "Executive director" means the Executive Director of the Office of Insurance.~~]

(5)[~~(4)~~] "Health benefit plan" is defined in KRS 304.17A-

005(22).

(6)[~~(5)~~] "Health care clearinghouse" means an entity that converts health care transactions into standardized formats and forwards them to an insurer.

(7)[~~(6)~~] "Health care provider" or "provider" is defined in KRS 304.17A-700(9), as amended by 2008 Ky Acts ch.127, Part XII, sec.18.

(8)[~~(7)~~] "Health claim attachments" is defined in KRS 304.17A-700(10).

(9)[~~(8)~~] "Insurer" is defined in KRS 304.17A-005(27).

(10)[~~(9)~~] "Limited health service benefit plan" is defined in KRS 304.17C-010(5).

[~~(10) "Office" means the Office of Insurance.~~]

Section 2. Requirements. (1) An attachment subject to the requirements of KRS 304.17A-706(2) shall be a standardized health claim attachment prescribed by 806 KAR 17:370.

(2) Pursuant to KRS 304.17A-704(4), an insurer response to a claim status inquiry by a provider shall either:

(a) Advise of no record of receiving the claim; or

(b) Provide the date the claim was received by an insurer, its agent, or designee, an insurer reference number for the claim, and one (1) of the following dated actions:

1. Claim is in process but has not had a determination of denial, payment, contest, or suspension by the insurer;

2. Claim denial, in whole or in part, and reason for denial;

3. Determination to pay claim, in whole or in part;

4. Claim suspension, in whole or in part, and reason for suspension; or

5. Claim contest, in whole or in part, and reason for contest.

Section 3. Claim Payment Time Frame. (1) The payment date of a claim shall be:

(a) The posting date of an electronic payment to a provider account;

(b) The postmark date of a nonelectronic payment mailed to a provider; or

(c) The documented date of nonmailed delivery of a nonelectronic payment received by a provider.

(2) An insurer, its agent, or designee shall be required, as part of the acknowledgment process in accordance with KRS 304.17A-704(2), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 19, to notify a provider, its billing agent, or designee that submitted the claim, of an attachment that is missing or in error, if required pursuant to KRS 304.17A-706(2) or 304.17A-720.

(3) Except for a claim involving an organ transplant, an insurer shall be in compliance with KRS 304.17A-702(1) if a clean claim is paid within:

(a) Thirty (30) days of receipt of the claim; or

(b) Three (3) business days of the check date if the check issued for payment of the claim is dated on the 28th, 29th, or 30th day after the claim is received.

(4) An insurer shall be in compliance with KRS 304.17A-702(1) for a clean claim involving an organ transplant if the claim is paid within:

(a) Sixty (60) days of receipt of the claim; or

(b) Three (3) business days of the check date if the check issued for payment of the claim is dated on the 58th, 59th, or 60th day after the claim is received.

(5) The claim payment time frame of KRS 304.17A-702(1), shall:

(a) Include the time a claim is with a health care clearinghouse acting on behalf of an insurer; and

(b) Not include the time a claim is with a health care clearinghouse acting on behalf of a provider.

Section 4. Payment of Interest. (1) The method used to calculate an interest payment required by:

(a) KRS 304.17A-730(1), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20, shall yield an amount not less than the result obtained by dividing the total number of days that a claim remains unpaid after the date payment was due by 365;

(b) Multiplying that quotient by the applicable interest rate established under KRS 304.17A-730(1), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20; and

(c) Multiplying that product by the unpaid amount of the claim owed.

(2) An interest payment shall identify the claim for which it is paid by including the following information:

(a) Name of covered person;

(b) Covered person's insurer identification number;

(c) Name of provider;

(d) Date of service;

(e) Amount of interest paid; and

(f) Insurer reference number for the claim.

(3) Except for nonpayment of interest by a limited health service benefit plan for the provision of dental-only benefits as established under KRS 304.17C-090(3), an insurer shall pay the interest required by KRS 304.17A-730, as amended by 2008 Ky Acts ch. 127, Part XII, sec. 20, within thirty (30) days after the date a claim is paid.

(4) An insurer shall not be required to pay interest on corrected payments made in accordance with KRS 304.17A-708(1).

Section 5. Contested Claims. (1) An insurer may contest a clean claim, pursuant to KRS 304.17A-706(1)(a) if an insurer, its[~~it's~~] agent, or designee has reasonable documented grounds, including:

(a) A covered person has notified the insurer that he has:

1. Another payment source; or

2. A preexisting condition;

(b) A provider has notified the insurer that a covered person has:

1. Another payment source; or

2. A preexisting condition;

(c) The insurer possesses file material establishing that:

1. Another insurer may be primarily responsible for the claim; or

2. A preexisting condition exists;

(d) A health claim attachment indicates another payment source; or

(e) A billing instrument identifies another payment source or a preexisting condition.

(2) An insurer in possession of the documentation listed in subsection (1) of this section shall provide this information to a provider upon request.

Section 6. An insurer offering a limited health service benefit plan for the provision of dental-only benefits, its agent or designee shall be subject to the requirements established under this administrative regulation except for a requirement as established under Section 3(4) of this administrative regulation and KRS 304.17C-090.

ROBERT D. VANCE. Secretary

APPROVED BY AGENCY: July 14, 1008

FILED WITH LRC: July 15, 2008 at 10 a.m.

Contact Person: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone 502-564-6088, fax 502-564-2728.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(As Amended at ARRS, September 9, 2008)

806 KAR 17:370. Standardized health claim attachments.

RELATES TO: KRS 304.17A-005, 304.17A-700-304.17A-730, 304.17C-010[~~, 304.17C-090~~], 304.39-010-304.39-340, 2008 Ky Acts ch. 127, Part XII, secs 18-20, 42 C.F.R. 411.32, 441.203, 441.206, 441.207, 441.208, 441.250, 441.255, 441.256 and 441.258

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-720(1), 304.17C-090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate reasonable administrative regulations necessary for or as an aid to the effectu-

ation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-720(1) requires the department to promulgate administrative regulations prescribing standardized health claim attachments to be used by insurers. [~~An insurer offering a limited health service benefit plan for the provision of dental-only benefits shall be subject to the provisions of KRS 304.17A-700 to 304.17A-730, except as provided in KRS 304.17C-090.~~] EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department. This administrative regulation establishes requirements for standardized health claim attachments and minimum requirements for routinely requested medical information health claim attachments.

Section 1. Definitions. (1) "Clean claim" is defined in KRS 304.17A-700(3).

(2) "Health benefit plan" is defined in KRS 304.17A-005(22).

(3) "Health care provider" or "provider" is defined in KRS 304.17A-700(9), as amended by 2008 Ky Acts ch. 127, Part XII, sec. 18.

(4)[~~(3)~~]"Health claim attachments" is defined in KRS 304.17A-700(10).

(5) [~~"Limited health services benefit plan" is defined by KRS 304.17C-010(5).~~

~~(4)~~] "Insurer" is defined in KRS 304.17A-005(27).

(6) "Limited health services benefit plan" is defined by KRS 304.17C-010(5).

(7) "Practitioner" means an individual licensed or certified to provide a health care service in Kentucky.

(8)[~~(6)~~] "Reparation obligor" is defined in KRS 304.39-020(13).

Section 2. Standardized Health Claim Attachments. If another payment source is identified by a provider, an insurer shall require the provider to include the following health claim attachments, as applicable, for a claim to qualify as a clean claim:

(1) An explanation of benefits statement or noncoverage notice from another payer;

(2) An electronic or paper-based Medicare remittance notice if the claim involved Medicare as a payer; and

(3) A record of all payments by a reparations obligor pursuant to KRS 304.39-010 to 304.39-340.

Section 3. Routinely-requested Health Claim Attachments. An insurer offering a health benefit plan or a limited health service benefit plan for dental only, may routinely request the following health claim attachments in accordance with KRS 304.17A-706(2), as applicable:

(1) A certification of medical necessity;

(2) A complete medical record, or part of a medical record, including:

(a) Discharge summary:

1. Patient identification, including name, age, gender, and medical record number;
2. Name of attending practitioner;
3. Dates of admission and discharge;
4. Final diagnosis;
5. Reason for the admission or visit;
6. Medical history;
7. Significant findings during length of stay or visit;
8. Procedures and treatments;
9. Patient condition at discharge;
10. Discharge medications; and
11. Discharge instructions;

(b) Emergency department report:

1. Patient identification, including name, age, gender, and medical record number;
2. Date of service;
3. Attending practitioner;
4. Chief complaint and symptoms;
5. History of present illness and physical exam;
6. Diagnostic test findings;
7. Clinical impression and diagnosis;
8. Treatment plan;
9. Discharge instructions; and
10. Practitioner orders;

(c) History and physical:

1. Patient identification, including name, age, gender, and medical record number;
2. Chief complaint;
3. Details of present illness;
4. Relevant past, social and family histories;
5. Inventory by body system;
6. Summary of psychological needs;
7. Report of relevant physical exam;
8. Statement relating to[~~on~~] the conclusions or impressions drawn from the admission history and physical;
9. Statement relating to[~~on~~] the course of action planned for this episode of care; and
10. Name of practitioner performing history and physical;

(d) Nurse's notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Vital signs with graphics, if available;
3. Intake and output record, if applicable;
4. Medication administration records;
5. Date of nurse's notes;
6. Nurse assessment;
7. Nursing intervention;
8. Observation; and
9. Name of nurse;

(e) Operative report:

1. Patient identification, including name, age, gender, and medical record number;
2. Date of procedure;
3. Operating practitioner;
4. Pre- and post-operative diagnoses;
5. List of procedures performed;
6. Operative description including indications and findings;
7. Anesthesia used; and
8. Specimens collected;

(f) Progress notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Discharge or treatment plan;
3. Practitioner orders;
4. Practitioner notes;
5. Attending practitioner name;
6. Results of tests and treatments;
7. Dates of notes; and
8. Chief complaint;

(g) Test results:

1. Patient identification, including name, age, gender, and medical record number;
2. Test findings, including date ordered and date competed; and
3. Ordering practitioner name;

(h) Practitioner orders or treatment plan, as applicable:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner orders;
3. Ordering practitioner name; and
4. Order dates;

(i) Practitioner notes:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner notes; and
4. Dates of notes;

(j) Consult notes and reports:

1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Findings and recommendations including notes and reports; and
4. Dates of notes and reports;

(k) Anesthesia record:

1. Patient identification, including name, age, gender, and medical record number;

2. Administering practitioner name;
3. Start and stop anesthesia times;
4. Route of administration;
5. Dates;
6. Notes;
7. Patient vital signs; and
8. Drug administered;
(l) Therapy notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner orders;
4. Treatment plan;
5. Number of treatments and dates;
6. Therapist's notes; and
7. Dates of notes;
(m) Office notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Any notes generated for dates of service; and
4. Dates of notes;
(n) Dental records; and
(o) Pharmacy records;[~~and~~]
(3) Certification and documentation as identified in 42 C.F.R. 441.203, 441.206, 441.207, 441.208, 441.250, 441.255, 441.256, and 441.258[~~The following forms, as applicable, incorporated by reference in 907 KAR 3:005 as part of the physician manual appendix:~~
~~(a) Certification form for induced abortion or miscarriage (MAP-235);~~
~~(b) Sterilization consent form (MAP-250); and~~
~~(c) Hysterectomy consent form (MAP-251)~~];
(4) Itemized bill; and
(5) Evidence of Medicare secondary payment pursuant to 42 C.F.R. 411.32.

JOHN BURKHOLDER, Acting Commissioner
ROBERT D. VANCE Secretary
APPROVED BY AGENCY: July 14, 2008
FILED WITH LRC: July 15, 2008 at 10 a.m.
CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need
(As Amended at ARRS, September 9, 2008)

900 KAR 6:050. Certificate of Need administrative regulation.

RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.330
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.
(2) "Cabinet" **is defined by KRS 216B.015(5)**[~~means the Cabinet for Health and Family Services~~].
(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.
(4) "Days" means calendar days, unless otherwise specified.
(5) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of a citizen of the Commonwealth.
(6) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.
(7) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.
(8) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.
(9) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.
(10) "Nonsubstantive review" is defined by KRS 216B.015(17).
(11) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.
(12) "Office or clinic" means the physical location at which health care services are provided.
(13) "Outpatient Health Care Center" means a licensed health care facility which is certified by the Centers for Medicaid Services under 42 C.F.R. 413.65 as a provider-based **entity**[~~institution~~], with permanent facilities on a single campus that is operated under the supervision of an organized medical staff and is comprised of service components for the provision of primary care, ambulatory surgery, twenty-four (24) hour emergency care, and radiological and magnetic resonance imaging.
(14) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.
(15)[~~(14)~~] "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.
(16)[~~(15)~~] "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.
(17)[~~(16)~~] "Proposed service area" means the geographic area the applicant proposes to serve.
(18)[~~(17)~~] "Public information channels" means the **Office of Communication and Administrative Review**[~~Division of Communications~~] in the Cabinet for Health and Family Services.
(19)[~~(18)~~] "Public notice" means notice given through:
(a) Public information channels; or
(b) The cabinet's Certificate of Need Newsletter.
(20)[~~(19)~~] "Qualified academic medical center" means:
(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;
(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership with an accredited medical school operated within the Commonwealth of Kentucky; or
(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person of a type or types referenced in paragraphs (a) or (b) of this subsection.
(21)[~~(20)~~] "Secretary" **is defined by KRS 216B.015(25)**[~~means the Secretary of the Cabinet for Health and Family Services~~].
(22)[~~(21)~~] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation; and

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete may be amended at a public hearing to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b)The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section 8 of this administrative regulation shall be as follows:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, and new technological developments shall be given on the third Thursday of the following months:

1. January; and

2. July.

(b) Public notice for residential hospice facilities, hospice agencies and home health agencies, and applications granted nonsubstantive review status pursuant to Section 8(2)(g) of this administrative regulation shall be given on the third Thursday of the following months:

1. February; and

2. August.

(c) Public notice for ground ambulance providers, private duty nursing services, mobile services, and rehabilitation agencies shall be given on the third Thursday of the following months:

1. March; and

2. September.

(d) Public notice for day health care programs, prescribed pediatric extended care facilities, and personal care beds shall be given on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for long term care beds, acute care hospitals including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency beds, ambulatory care centers, freestanding ambulatory surgical centers, outpatient health care centers, and birthing centers shall be given on the third Thursday of the following months:

1. May; and

2. November.

(f) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be given on the third Thursday of the following months:

1. June; and

2. December.

(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review requested pursuant to Section 8 of this administrative regulation. Applications for which nonsubstantive review status has been requested pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been

deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(6) A determination that an application is complete shall:

(a) Indicate that the applicant has minimally responded to the necessary items on the application;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval of a certificate of need.

(7) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(8) If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete;

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(10) If the application is incomplete, or if the information submitted is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(12) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020.

(b) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(c) An application seeking to reestablish a licensed healthcare[,] facility[,] or service, which was provided at the healthcare facility and which was voluntarily discontinued by the applicant, shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare service or facility:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for relicensure;

d. Was not an express condition of any subsequent Certificate of Need approval; and

e. Did not occur less than twenty-four (24) months prior to the submission of the application to reestablish;

2. The proposed healthcare service shall be provided within the same service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to reestablish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:

(a) If the applicant has identified a need for the proposal in the geographic area defined in the application; and

(b) If the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. The cabinet shall determine if the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. The cabinet shall determine:

(a) If the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) If the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability. The

cabinet shall determine:

(a) If it is economically feasible for the applicant to implement and operate the proposal; and

(b) If applicable, if the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services. The cabinet shall determine:

(a) If the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) The cabinet may grant nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a)1. There is no substantial change in health services or bed capacity; and

2. The change of location or relocation is within the same county; or

(b) The change of location for a psychiatric residential treatment facility is within the same district as defined in KRS 216B.455 and is to the same campus as a licensed psychiatric residential treatment facility.

(2) In addition to the projects specified in KRS 216B.095(3)(a) through (e)**,** pursuant to KRS 216B.095(f), the **Office of Health Policy**[~~Division of Certificate of Need~~] may grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c) The proposal involves an application to relocate nursing facility beds from one long term care facility to another long term care facility and the requirements established in this paragraph are met.

1. If the relocation takes place within the same county, the following restrictions shall apply:

a. The application shall be filed on or before October 1, 2008; and

b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling or transferring facility's binding commitment to sell or transfer upon approval of the application.

2. If the relocation is to be from one county to another county, the following restrictions shall apply:

a. The letter of intent shall be filed no later than September 1, 2008 and the application shall be filed no later than October 1, 2008;

b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling or transferring facility's binding commitment to sell or transfer upon approval of the application;

c. The selling or transferring facility shall be located in a county that had a nursing facility bed occupancy rate of less than ninety-five (95) percent (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report;

d. The acquired beds shall only be relocated to a county whose nursing facility bed occupancy was ninety-five (95) percent or greater (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report;

e. A long term care facility shall not sell, transfer, or acquire more than fifteen (15) of its licensed nursing facility beds; and

f. Notwithstanding the occupancy rates provided in clauses c and d in this subparagraph, the cabinet may grant nonsubstantive review status to an application to transfer licensed nursing facility beds between facilities that have common ownership or management**;**[~~.~~]

(d)1. The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district; and

a. There is no increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the beds are relocated delicenses those beds; and

2. If neonatal Level II beds are relocated or transferred pursuant to this subsection:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(e) The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;[~~or~~]

(f) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds**; or**[~~.~~]

(3) If an application is denied nonsubstantive review status by the **Office of Health Policy**[~~Division of Certificate of Need~~], the application shall automatically be placed in the formal review process.

(g) The proposal involves an application to convert an existing licensed outpatient health care center to an acute care hospital with no more than sixty (60) acute care beds and the requirements established in this paragraph are met.

1. The letter of intent is filed no later than June 2, 2008 and the application is filed no later than July 2, 2008;

2. The proposed acute care hospital shall be located in a county with a current population of at least 60,000 residents;

3. The proposed acute care hospital shall be located in a county which does not contain a licensed acute care hospital or licensed critical access hospital; and

4. An existing licensed acute care hospital located in a county contiguous to the proposed location provides evidence of their binding commitment to transfer up to sixty (60) acute care beds to the proposed acute care hospital upon approval of the application.

(4) If an application is granted nonsubstantive review status by the **Office of Health Policy**[~~Division of Certificate of Need~~], notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(5) If an application is granted nonsubstantive review status by the **Office of Health Policy**[~~Division of Certificate of Need~~], any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings. Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for

hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the **Office of Health Policy**[~~Division of Certificate of Need~~], there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the **Office of Health Policy**[~~Division of Certificate of Need~~] shall not be reviewed for consistency with the State Health Plan.

(7) The cabinet shall approve applications for certificates of need that have been granted nonsubstantive review status by the **Office of Health Policy**[~~Division of Certificate of Need~~] if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure and the cabinet finds that the facility or service with respect to which the capital expenditure is proposed to be made is required. The cabinet shall find that the facility or service with respect to which the capital expenditure is proposed to be made is required, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(8) The cabinet shall disapprove **an application for a certificate of need that has**[~~applications for certificates of need that have~~] been granted nonsubstantive review if:

(a) The cabinet finds that the applicant is not entitled to nonsubstantive review status; or

(b) The cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status by the **Office of Health Policy**[~~Division of Certificate of Need~~] within thirty-five (35) days of the date that public notice is given that nonsubstantive review status has been granted.

(10) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review.

(a) If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing.

(b) If the application is being reviewed un[illegible]r formal review, the notice to defer shall be filed no later than ten [illegible]) days prior to the date that the decision is due on the applic[illegible] unless a hearing has been scheduled. If a hearing has been s[illegible]uled, the notice to defer shall be filed eight (8) days prior to the date of the hearing.

(c) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a)1. The person is not a hospital, and the person is licensed by the appropriate Kentucky licensing authority to provide the service necessary to alleviate the emergency; or

2. The person is a hospital, and the hospital has an already-issued certificate of need to provide the service necessary to alleviate the emergency;

(b) The **Office of Health Policy**[~~Division of Certificate of Need~~] is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and

(c) The **Office of Health Policy**[~~Division of Certificate of Need~~] acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the **Office of Health Policy**[~~Division of Certificate of Need~~] shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services, which shall contain the following information:

(a) A detailed description of the emergency which shall include at least the following information:

1. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service;

2. A list of the providers in the county licensed to provide the services that will be provided during the emergency; and

3. Proof that:

a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; or

b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided; and

(d) The expected duration of the emergency.

(3) The **Office of Health Policy**[~~Division of Certificate of Need~~] may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency does exist.

(4) If the provision of service to meet the emergency circums-

tance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 4 of this administrative regulation.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency ceases to exist; or

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 13. Transfers of Certificates of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing the documents with the **Office of Health Policy**[~~Division of Certificate of Need~~], HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business day after the due date.

(3) Failure to file documents in accordance with the schedule and manner provided in subsections (1) and (2) of this section shall result in the materials being returned to the sender and the cabinet shall not take additional action until the material is properly resubmitted.

(4) The **Office of Health Policy**[~~Division of Certificate of Need~~] shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be included.

(6) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the CON newsletter if applicable; and

(c) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the Office of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who will participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;

(b) Witness List, Form #4; and

(c) Exhibit List, Form #5 and attached exhibits.

(8)(a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new Notice of Appearance, Form #3; and

2. Either:

a. Incorporate previously-filed witness lists (Form #4) and exhibit lists (Form #5); or

b. File amended Forms #4 and #5.

(b) A new party to the hearings shall file original Forms #3, #4 and #5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

(9) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(10) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(11) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(12) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and

(c) Question any party or witness.

(13) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

(14) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(15) Witnesses shall be examined under oath or affirmation.

(16) Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(17) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and other parties at least:

1. Seven (7) working days before the hearing for formal review applications; or

2. Five (5) working days for nonsubstantive review applications.

(18) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(19) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(20) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

(21) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(22) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with Section 18 of this administrative regulation.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted, hearing shall be held by the cabinet in accordance with the applicable provisions of Section 16 or 18 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(7) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of that certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9)(a) Except as provided by paragraph (b) or (c) of this subsection, if it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her findings of fact and proposed decision on whether the evidence has established the following:

1. The practice claiming the exemption is 100 percent owned in

any organizational form recognized by the Commonwealth by the individual physician, dentist, or other practitioner of the healing arts or group of physicians, dentists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

2. The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

3. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

4. A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption are responsible for all decisions regarding the care and treatment provided to patients;

5. Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

6. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

7. Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

8. Nothing in this section shall limit or prohibit the continued operation of an office or clinic which was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

a. Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office or clinic;

b. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

c. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(b) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

1. Compliance with paragraph (a)1, 4, 5, and 6 of this subsection;

2. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

3. The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(c) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

1. The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

2.a. The office was established and in operation prior to January 31, 2006;

b. The office does not provide any services or equipment covered by the State Health Plan; or

c. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need newsletter if applicable.

(13) At least seven (7) business days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a certificate of need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, (Form #3);

(b) Witness List, (Form #4); and

(c) Exhibit List, (Form #5) and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.

Section 19. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits if there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or $100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than $500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is $500,0000 to $4,999,999;

(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, for projects if the capital expenditure authorized on the certificate of need is $5,000,000 to $24,999,999;

(d) Five (5) percent of the amount in excess of $25,000,000, plus $[illegible]00,000, if the capital expenditure authorized on the certificate of need is $25,000,000 to $49,999,999; and

(e) Two (2) percent of the amount in excess of $50,000,000, plus $[illegible]50,000, if the capital expenditure authorized on the certifi-

cate of need is $50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:

(a) Constitute a substantial change in a project; and

(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be:

(a) Presumed to be a willful violation of KRS Chapter 216B; and

(b) Subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #8, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall determine:

(a) If the required elements have been completed; and

(b) If the required elements have not been completed, if sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Office of Inspector General; and

(b) A final cost breakdown has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that[~~:~~

~~(a)~~] the failure was due to emergency circumstances or other causes that:

(a) Could not reasonably be anticipated and avoided by the holder; or

(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (6) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) For projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment: plans for implementation of the project;

(b) For projects for the purchase of equipment only: a copy of the purchase order;

(c) For projects involving the acquisition of real property: evidence of an option to acquire the site; or

(d) For construction or renovation projects: evidence that schematic plans have been submitted to the [~~Environmental and~~]Public Protection Cabinet, Department of[~~Public Protection, Office of~~] Housing, Buildings, and Construction, and the Office of Inspector General.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) For projects converting beds: documentation that all beds are licensed;

(b) For projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Office of Inspector General or the Kentucky Board of Emergency Medical Services; or

(c) For construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) For construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, if applicable;

3. Documentation that final plans have been submitted to the[~~Environmental and~~] Public Protection Cabinet, Department of [~~Public Protection, Office of~~] Housing, Buildings, and Construction, and the Office of Inspector General; and

4. Enforceable contract with a construction contractor; or

(b) For projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Office of Inspector General.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the[~~Environmental and~~] Public Protection Cabinet, Department of[~~Public Protection, Office of~~] Housing, Buildings, and Construction, and the Office of Inspector General and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the[~~Environmental and~~] Public Protection Cabinet, Department of [~~Public Protection, Office of~~] Housing, Buildings, and Construction, and the Office of Inspector General.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; or

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the[~~Environmental and~~] Public Protection Cabinet, Department of[~~Public Protection, Office of~~] Housing, Buildings, and Construction, and the Office of Inspector General; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Office of Inspector General.

(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown if

the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.

(20) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(21) If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with Section 18 of this administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine if they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review shall be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of, and any sanctions for, this violation shall be conducted in accordance with Section 18(4) of this administrative regulation.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion, Form #7.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a non-clinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition or Establishment of a Health Service. (1) **Health facilities shall notify the cabinet that a service or equipment has been added within ten (10) days of the addition if the facility:**

(a) Makes an addition to an existing health service (including adding ICF/MR respite beds) for which there is review criteria in the State Health Plan, but for which a certificate of need is not required; or

(b) Adds equipment for which there is a review criteria in the State Health Plan, but for which a certificate of need is not required[~~Health facilities that make additions to an existing health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required to include ICF/MR respite beds, or add equipment for which there are review criteria in the State Health Plan but for which a certificate of need is not required, shall notify the cabinet that a service or equipment has been added within ten (10) days of addition.~~

~~(2) Notice of Addition of a Health Service or Equipment (Form #10) shall be used in making the notification~~].

Section 24. Certification of Continuing Care Retirement Communities. (1) In order to be certified as a continuing care retirement community, a certificate of compliance shall be obtained from the **Office of Health Policy**[~~Division of Certificate of Need~~].

(2) In order to obtain a certificate of compliance, a continuing care retirement community shall complete and file Form #11 thereby certifying that:

(a) All residents shall have a written agreement with the continuing care retirement community;

(b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;

(c) None of the health facilities or health services established by the continuing care retirement community under this section shall apply for or become certified for participation in the Medicaid Program, and that this restriction shall be disclosed in writing to each of its residents;

(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care retirement community under this section, and that this restriction shall be disclosed in writing to its residents;

(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;

(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;

(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;

(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or the resident's guardian;

(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;

(j) The continuing care retirement community shall share information on alternative living arrangements provided by the **Department of Aging and Independent Living**[~~Division of Aging Services~~] at the time a move-out notice is given to a resident; and

(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3) The **Office of Health Policy**[~~Division of Certificate of Need~~] shall issue a certificate of compliance within thirty (30) days of receipt of a completed Form #11 if all conditions are met. If all conditions are not met, the cabinet shall advise the applicant of any deficiencies. Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the **Office of Health Policy**[~~Division of Certificate of Need~~] the payor source for each of its nursing home beds.

(7) Upon request, the continuing care retirement community shall provide the **Office of Health Policy**[~~Division of Certificate of Need~~] the number of each type of bed or living unit within the continuing care retirement community.

Section 25. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to reestablish the number of acute care beds that the hospital operated prior to becoming a critical access hospital if the hospital decides to discontinue operating as a critical access hospital.

Section 26. Swing Beds. (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R. 482.66 or 485.645, shall not be required to obtain a certificate of need to utilize its licensed acute or critical access hospital beds as swing beds.

(2) For a designated swing bed hospital to add new acute or critical access hospital beds which may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval shall be required.

Section 27. Pilot Angioplasty Program. The provisions of this section shall apply to the pilot project for primary angioplasty in hospitals without on-site open heart surgery ("pilot program") established in the 2004-2006 State Health Plan. (1) Hospitals participating in the pilot program shall immediately (within twenty-four (24) hours of the event or on the first business day following the event) report the following events to the **Office of Health Policy**[~~Division of Certificate of Need~~] by fax at (502) 564-0302 or **by emailing the executive director**[~~e-mail (joni.cracraft@ky.gov)~~]:

(a) Death within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. The report shall indicate if the death was a "cardiac death" or a "noncardiac death".

1. A death shall be considered a "cardiac death" if the death was due to any of the following:

a. Acute myocardial infarction;

b. Cardiac perforation/pericardial tamponade;

c. Arrhythmia or conduction abnormality;

d. Cerebrovascular accident related to, or suspected of being related to, the cardiac catheterization procedure. An event shall be considered to be a "cerebrovascular accident" if there were acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred:

(i) During the index catheterization; or

(ii) During the index hospitalization;

e. Death due to complication of the procedure including bleeding, vascular repair, transfusion reaction, or bypass surgery; or

f. Any death in which a cardiac cause could not be excluded.

2. A death shall be considered a "noncardiac death" if the death was not due to cardiac causes as described in subparagraph 1 of this paragraph;

(b) Emergency coronary artery bypass surgery (CABG) within twenty-four (24) hours of the procedure or hospital discharge. An event shall be considered to be an "emergency" if there is a sudden and often life-threatening mishap that arises in the course of, and as a result of, the performance of a cardiac catheterization or angioplasty procedure. It shall not include patients either transferred directly from the cardiac catheterization procedure room or taken within twenty-four (24) hours to the operating room for surgical correction of emergent/life threatening cardiac disease; or

(c) Shock within twenty-four (24) hours of the procedure or hospital discharge.

(2) Hospitals participating in the pilot program shall report to the **Office of Health Policy**[~~Division of Certificate of Need~~] in writing within seven (7) days, any of the following events:

(a) Cerebrovascular accident, which are acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred within thirty (30) days after the catheterization but were not clearly related to the procedure;

(b) Any intracranial bleed within thirty (30) days of the cardiac catheterization procedure;

(c) Recurrent Q wave or Non-Q wave Myocardial infarction (MI) during the initial hospitalization; or

(d) Vascular complications which occur within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. These shall include:

1. Hematoma more than four (4) centimeters;

2. Retroperitoneal Bleed;

3. False Aneurysm;

4. AV fistula;

5. Peripheral ischemic/nerve injury; or

6. Hemolysis and Hemolytic anemia.

(3) Hospitals participating in the pilot program shall:

(a) Establish a Joint Performance Improvement Committee (Joint PI Committee) with its collaborating tertiary hospital or with practicing interventional cardiologists. The membership of the Joint PI Committee shall, at a minimum, include each of the following disciplines: physicians, nurses and administrators from both the pilot program hospital and the collaborating tertiary hospital;

(b) Convene the Joint PI Committee at least quarterly but sooner if twenty-five (25) patients have been treated to review the care provided to patients under the pilot program. This review process shall focus on patient outcomes and, at a minimum, include:

1. An assessment of the appropriateness of the selection of each patient entered into the pilot program;

2. All complications, any adverse outcomes, number of the patients requiring and reason for transfer to a tertiary facility;

3. The technical quality of the catheterization and angioplasty procedures performed; and

4. The "door to cath lab time" and "door to treatment time";

(c) Develop and implement a plan of correction for any problems identified;

(d) Develop a process for including the findings of the Joint PI Committee's review in the pilot program hospital's performance improvement program;

(e) Require the Joint PI Committee to make a quarterly recommendation to the **Office of Health Policy**[~~Division of Certificate of Need~~] whether the pilot program should continue; and

(f) Require all staff (including, at a minimum, interventional cardiologists, nurses and technicians) as well as representatives of the Emergency Department and Critical Care Unit staffs participating in the pilot program PI process, to attend a minimum of one (1) meeting of the Joint PI Committee per year.

(4) Performance of primary angioplasty (as measured by quality indicators including mortality, morbidity, and adverse reactions) at a pilot hospital shall be comparable, on a risk adjusted basis, to the performance of existing angioplasty programs in Kentucky and with similar organizations nationally, according to the National Cardiovascular Data Registry.

(a) If the outcomes are worse at a pilot hospital, that facility shall file and implement a plan of correction with the **Office of Health Policy**[~~Division of Certificate of Need~~].

(b) If the facility's results do not improve after one (1) quarter of implementing a plan of correction, the **Office of Health Policy**[~~Division of Certificate of Need~~] may terminate the facility's participation in the pilot program.

(5) Hospitals participating in the pilot program shall:

(a) Continue to make available the cardiac catheterization service twenty-four (24) hours per day and seven (7) days per week;

(b) Develop policies and procedures that will assure that all interventional cardiologists performing primary angioplasty procedures at the pilot program hospital will maintain an appropriate level of proficiency as a member of the team performing primary angioplasty at the pilot program hospital. The policies and procedures shall detail the process the physician director will utilize to assure the establishment, maintenance and monitoring of the proficiency of each interventional cardiologist;

(c) Maintain a collaborative association and a current, valid collaboration agreement with a tertiary hospital including Joint PI and staff education programs; and

(d) Perform a minimum of thirty-six (36) primary angioplasty procedures per year. At least thirty (30) of these angioplasty pro-

cedures shall be primary angioplasty procedures, excluding patients that have "rescue angioplasty" procedures performed.

(6) The time frame for measuring compliance with procedural utilization requirements shall begin six (6) months after the date of the physician director's notification to the **Office of Health Policy**[~~Division of Certificate of Need~~] that all training requirements have been fulfilled. Within twelve (12) months from the "start date," the hospital shall have performed eighteen (18) primary angioplasty procedures or shall receive a warning that approval to participate in the pilot program may be withdrawn.

(7) Within the following six (6) months, a total of eighteen (18) months from the date of the department's letter of approval, the hospital shall have performed at least another eighteen (18) procedures (a total of thirty-six (36) primary angioplasty procedures) or the program may be discontinued at that site.

(8) Each site shall continue to perform eighteen (18) primary angioplasty procedures per six (6) months and a total of thirty-six (36) primary angioplasty procedures per year, or the program may be discontinued at that site.

(9) All physicians performing percutaneous coronary intervention (PCI) at a pilot program hospital shall:

(a) Continue to perform no fewer than 100 cardiac catheterization procedures per year (total diagnostic and therapeutic). At least seventy-five (75) procedures shall be angioplasty procedures unless the procedures are being performed at a facility at which more than 400 angioplasty procedures are being performed per year; and

(b) Maintain credentials at a hospital at which that operator performs elective angioplasty procedures.

(10)(a) All staff that are hired after the completion of the initial training at the pilot program hospital shall complete a training program that mirrors the initial training program. The relevant collaborating tertiary and pilot program hospitals shall develop this training program.

(b) Training of all staff including, at a minimum, all interventional cardiologists, nurses and technicians, shall be performed on the intra-aortic balloon pump annually.

(c) All staff involved in providing PCI, including the interventional cardiologists, nurses and technicians, shall have a current Advanced Cardiac Life Support (ACLS) certification.

(d) Inservice programs shall, at a minimum, be based upon need identified through staff evaluations and quality assurance process.

(11) The **Office of Health Policy**[~~Division of Certificate of Need~~] may discontinue the pilot program at a participant hospital at any time after reviewing the following:

(a) Quarterly reports made by the American College of Cardiology - National Cardiovascular Data Registry (ACC-NCDR);

(b) Records obtained through an audit;

(c) Peer review reports; or

(d) Reports on serious adverse events.

(12) Upon notification to the hospital by the **Office of Health Policy**[~~Division of Certificate of Need~~], the hospital shall terminate the pilot program and cease to perform primary angioplasty procedures.

(13) In order to assist the **Office of Health Policy**[~~Division of Certificate of Need~~] in evaluating the pilot program, the performance of pilot hospitals, and the formulation of recommendations for continuing or modifying the project, the **Office of Health Policy**[~~Division of Certificate of Need~~] may collaborate with university based researchers to:

(a) Evaluate and compare performance data of pilot hospitals with existing Kentucky angioplasty programs; and

(b) Conduct an evaluation of the short-and long-term outcomes of patients undergoing primary angioplasty at pilot hospitals with those patients transferred to hospitals with open heart surgical backup.

(14) The **Office of Health Policy**[~~Division of Certificate of Need~~] shall review reports from the collaborating university based researchers as well as quarterly reports made by the ACC-NCDR, records obtained through audit, peer review reports and reports of serious adverse events in order to develop recommendations for continuing, discontinuing, or modifying the pilot program. If the project is continued, these recommendations shall include establishing criteria for determining need to expand angioplasty services to additional hospitals without on-site surgical backup, qualifications of those hospitals, and ongoing requirements for a hospital's continued provision of this service.

(15) The **Office of Health Policy**[~~Division of Certificate of Need~~] may convene all hospitals participating in the pilot program on a regular basis for the purpose of discussing and assessing the status of the implementation of the pilot program.

(16) Three (3) years from the start date of the pilot program, the **Office of Health Policy**[~~Division of Certificate of Need~~] shall publish a report on the program. The report shall**:**[~~:~~]

(a) Indicate whether it is in the best interest of the Commonwealth to eliminate the requirement for open heart surgery for hospitals to perform therapeutic cardiac catheterization; and

(b) Include the requirements for patient selection, procedural volume, and staffing that hospitals shall continue to meet to provide this service if the **Office of Health Policy**[~~Division of Certificate of Need~~] finds that this service may be provided by hospitals in the absence of on-site open heart surgery.

Section 28. Magnetic Resonance Imaging Report. (1) A Magnetic Resonance Imaging unit (MRI) utilized in the Commonwealth shall be disclosed to the Cabinet for Health and Family Services, Office of Health Policy for publication in the Kentucky Annual Magnetic Resonance Imaging Services Report.

(2) The following information shall be submitted about every MRI unit utilized in the Commonwealth:

(a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;

(b) Identification of designated contact person or authorized agent of each facility;

(c) Make, model, and serial number of each unit;

(d) Date the unit became operational at each site;

(e) Whether the unit is free-standing or mobile (if the unit is mobile, then also identify the number of days the unit is operational); and

(f) Number of scans performed during the previous calendar year.

(3) The owner or operator of any MRI unit that becomes operational at an unlicensed facility after August 1, 2006, shall have thirty (30) days after use of the unit is commenced to provide the information required by subsection (2) of this section.

(4) The information shall be provided by completion of "The Annual Survey of Magnetic Resonance Imaging Services". A copy of that survey may be obtained, completed, and transmitted electronically by accessing the Office of Health Policy's Web site at http://chfs.ky.gov/ohp/con. A copy can also be obtained at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 3CB, Frankfort, Kentucky 40621.

(5) Within thirty (30) days of an event, the designated contact person or authorized agent shall notify the Office of Health Policy about any change in the facility's address or the addition of another MRI unit as well as the discontinuation of any units.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Letter of Intent", [{]Form #1**,**[~~)~~ ~~(~~]10/12/99[}];

(b) "Certificate of Need Application", [{]Form #2A**,**[~~)~~ ~~(~~]3/6/03[}];

(c) "Certificate of Need Application for Ground Ambulance Providers", [{]Form #2B**,** [~~)~~ ~~(~~]6/15/99[}];

(d) "Certificate of Need Application for Change of Location, Replacement, or Cost Escalation", [{]Form #2C**,**[~~)~~ ~~(~~]3/6/03[}];

(e) "Notice of Appearance", [{]Form #3**,**[~~)~~ ~~(~~]3/6/03[}];

(f) "Witness List", [{]Form #4**,** [~~)~~ ~~(~~]3/6/03 [}];

(g) "Exhibit List", [{]Form #5**,** [~~)~~ ~~(~~]3/6/03 [}];

(h) "Cost Escalation Form", [{]Form #6**,**[~~)~~ ~~(~~]6/15/99[}];

(i) "Request for Advisory Opinion", [{]Form #7**,**[~~)~~ ~~(~~]3/6/03[}];

(j) "Six (6) Month Progress Report", [{]Form #8**,**[~~)~~ ~~(~~]6/15/99[}];

(k) "Acquisition of a Health Facility, Notice of Intent to Acquire" [{]Form #9**,**[~~),~~ ~~(~~]3/6/03[}];

(l) "Notice of Addition of a Health Service or Equipment", [{]Form #10**,**[~~)~~ ~~(~~]6/15/99[}];

(m) "Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", [{]Form #11**,**[~~)~~ ~~(~~]11/29/00[}];

and

(n) "Annual Survey of Magnetic Resonance Imaging Services", [{]5/12/06[}].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, **Office of Health Policy**[~~Division of Certificate of Need~~], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHANE O'DONLEY, Director
JANIE MILLER, Secretary
APPROVED BY AGENCY: April 29, 2008
FILED WITH LRC: April 30, 2008 at 9 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, September 9, 2008)

902 KAR 45:150. School sanitation.

RELATES TO: KRS 211.180, 212.210, 212.990
STATUTORY AUTHORITY: KRS[~~Chapter 13B,~~] 194.050, 211.090, [~~EO 96-862~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180 and 212.210 **requires**[~~authorizes~~] the Cabinet for Health and Family Services to regulate certain public health matters including the detection, prevention, and control of communicable disease and health hazards relating to sanitation and safety in schools. This administrative regulation establishes uniform standards for schools and includes sanitary standards for operation, inspections, and enforcement procedures necessary to insure a safe and sanitary environment. [~~EO 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health and Family Services.~~]

Section 1. [~~Citation of Administrative Regulation. This administrative regulation may be cited as "The Kentucky School Sanitation Regulation."~~

~~Section 2.~~] Definitions. [~~As used in this administrative regulation the following definitions shall apply:~~]

(1) **"Approved sewage disposal system" means a sewage disposal system approved by the Department for Public Health consistent with 902 KAR 10:085, Section 1(2).**

(2) "Approved water supply" means that the source of water:

(a) Is a spring, well, public water system, or other source of water;

(b) Has been sampled and analyzed by the Energy and Environment Cabinet, Department for Environmental Protection, Division of Water;

(c) Has been found to be of a safe and sanitary quality and quantity in accordance with 401 KAR Chapter 8; and

(d) Has been approved by the Energy and Environment Cabinet, Department for Environmental Protection, Division of Water.

(3) "Cabinet" means the Cabinet for Health and Family Services and its designated agents.

(4)[~~(2)~~] "Designated agents" means local health department environmentalists that are duly registered sanitarians[~~/~~] environmental health specialists.

(5)[~~(3)~~] "Local Board of Education" means a duly elected or appointed Board, any private agency, or organization that operates, controls, or supervises a school or system of schools.

(6)[~~(4)~~][~~(3)~~] "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity owning or operating a school.

(7)[~~(5)~~][~~(4)~~] "School" means any area, parcel, or tract of land on which facilities are established, maintained, or operated for educational purposes, including public, parochial, and private facilities enrolling students in any of the grades kindergarten through the 12th grade including vocational education facilities, but excluding day care facilities, and individuals teaching their own children.[~~Privately operated facilities shall include only those areas used for school purposes.~~]

(8)[~~(6)~~][~~(5)~~] "Semipermanent school structure" means any school structure that is constructed off-site and transported to the school site and is intended to serve as temporary classroom or other facility and not made a fixed portion of any existing school structure.

(9) "State Plumbing Code" means 815 KAR Chapter 20.

(10)[~~(7)~~][~~(6)~~] "Tempered water" means a water temperature of at least ninety (90) degrees Fahrenheit to a maximum temperature of 110° F.

[~~(8) "Approved water supply" means the source of the water whether it be from a spring, well, public water system, or other source that the Environmental and Public Protection Cabinet Drinking Water Branch has sampled and the water analyzed, and found to be safe and sanitary quality and quantity in accordance with 401 KAR Chapter 8 and subsequently approved by the Environmental and Public Protection Cabinet Drinking Water Branch.~~

~~(9) "Approved sewage disposal system" means a sewage disposal system approved by the Department for Public Health consistent with 902 KAR 10:085, Section 1(2).~~]

Section **2.**[~~3.~~] Water Supply. (1)**(a)** The water supply shall be potable and from an approved public water supply, if available.

(b) If an approved public water supply is not available, the supply for the school shall be developed and approved pursuant to applicable requirements of the **Energy and Environment**[~~Environmental and Public Protection~~] Cabinet.[~~;~~] If an approved public water supply subsequently becomes available, connections shall be made to it and the school supply shall be discontinued.

(2) The water supply shall be of adequate quantity and under sufficient pressure to permit unrestricted use.

(3)**(a)** [~~Alternative delivery methods may be used only in schools of thirty-five (35) or less and only with formal written approval by the Environmental and Public Protection Cabinet.~~

~~(4)~~] All drinking fountain installations shall meet the requirements of the State Plumbing Code and shall be maintained in proper working order with adequate pressure and in a clean sanitary condition. Provision shall be made so that small children can drink with ease.

(b) In lieu of water fountains, portable drinking water containers may be used. If portable drinking water containers are used, they shall be of easily cleanable construction, kept securely closed and designed so that water may be withdrawn from the container only by water tap or faucet, and shall be maintained in a sanitary condition.

(c) If paper drinking cups are used, they shall be stored and dispensed in a sanitary manner and discarded after use. Common drinking cups **shall not be used**[~~are prohibited~~].

Section **3.**[~~4.~~] Sewage and Solid Waste Disposal. (1)**(a)** All sewage and liquid waste matter shall be disposed of into a public sewer system, if available.

(b) If a public sewer is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet or[~~and~~] the **Energy and Environment**[~~Environmental and Public Protection~~] Cabinet.[~~;~~] If a public sewer system subsequently becomes available, connections shall be made to it and the school's private[~~school~~] sewage disposal system shall be discontinued.

(2) All plumbing shall comply with the State Plumbing Code.

(3) All private sewage disposal systems shall be operated in a manner that does not create a nuisance or possible hazard to public health. Nonwater carriage toilets may be utilized if consistent with 902 KAR 10:085, Section 1(2).

(4) [~~Alternative methods may be used only in schools of thirty-five (35) or less and only with formal written approval by the Cabinet for Health and Family Services.~~

~~(5)~~] All waste paper and solid waste shall be disposed of so as not to create a health or safety hazard and in a manner approved by the **Energy Environment**[~~Environmental and Public Protection~~] Cabinet.

(5)**(a)**[~~(6)~~] Containers shall be provided in all classrooms and hallways for storage of solid waste.

(b) All bulk solid waste shall be stored in containers, adequate in number **to contain the waste**, with tight-fitting lids.

(c) All bulk solid waste storage areas shall be constructed and maintained to prevent the entry and harborage of insects, rodents, and other vermin.

(d) All solid waste containers shall be of easily cleanable construction, kept clean and in good repair.

Section **4.**[~~5.~~] Restroom Facilities. (1) All schools shall provide restroom facilities pursuant to the requirements of the State Plumbing Code.

(2) All restrooms, locker rooms, and toilet, shower and hand-washing fixtures shall be maintained in a clean, sanitary condition.

(3) All restroom and locker room floors, walls, toilet partitions, ceilings, windows, and fixtures shall be maintained in good repair.

(4) A minimum of twenty (20) foot-candles of light shall be provided in all restrooms and locker rooms as measured at a height of thirty (30) inches above the floor.

(5)**(a)** An ample supply of toilet tissue and soap shall be provided. **(b)** Disposable paper towels, cloth roll-type dispenser towels, or electric hand-drying devices shall be provided.

(c) Easily cleanable waste receptacles shall be provided in each restroom and locker room and shall be kept clean and in good repair.

(d) Waste receptacles shall be of covered-type design in all restrooms and locker rooms for female teachers and female students in grades seven (7) and above.

(6)**(a)** All hand-washing and shower facilities shall be supplied with hot and cold or tempered water under pressure.

(b) Temperature and pressure control devices shall be installed on all shower facilities pursuant to the requirements of the State Plumbing Code.

(7) For a parochial school of thirty-five (35) or less students **if**[~~where~~] the school privies do not have running potable water under pressure:

(a) The pupils shall be provided with potable water from an approved public water supply, if available, or a private water supply approved by the **Energy and Environment**[~~Environmental and Public Protection~~] Cabinet Drinking Water Branch for hand washing purposes that meets the following requirements:

1. The water shall be placed in an insulated container that:

a. Is rated to keep the temperature of the water from dropping below **ninety (90) to 110° F** [~~90 to 110 degrees~~] for a period of two (2) hours;

b. Holds a minimum of ten (10) gallons of water; and[~~.~~]

c. Has a spigot that is capable of allowing water to run continuously without being held or depressed by hand in order to allow both hands to be washed together;

2. The temperature of the water shall be a minimum of **ninety (90) degrees Fahrenheit**[~~90 degrees~~] and shall not exceed 110° F when placed in the container;

3. If the water in the container falls below **ninety (90) degrees Fahrenheit**[90 degrees], it shall be reheated to **ninety (90) degrees Fahrenheit**[~~90 degrees~~] or replaced with water that meets the requirements of subparagraph 2 of this paragraph; **and**

4. The amount of water in the container shall be inspected at least twice during the school day and replenished as necessary to keep a supply of water constantly available during the entire school day;

(b) A record shall be kept showing that the water has been inspected and replenished as required by paragraph (a)4 of this subsection; **and**

(c) The wastewater generated from hand washing shall be disposed of in an approved sewage disposal system.[~~For schools of thirty-five (35) or less students and where the school privies do not have running potable water under pressure, the pupils shall be supplied with potable water from an approved public water supply or an approved water supply in the privies for handwashing purposes form an insulated container, or sufficient volume, with a spout, used in an approved sanitary manner.~~]

(8)**(a)** All windows used for room ventilation in restrooms and locker rooms shall be screened to prevent the entry of insects and other vermin.

(b) Except as provided in paragraph (c), (d), or (e) of this subsection, all restrooms and locker rooms in schools without central heating and air-conditioning or other closed-environment type heating, ventilation, and air-conditioning systems shall have self-closing doors.

(c) Schools with less than ten (10) students shall not be required to have self-closing doors.

(d) In those schools at which closed-environment type HVAC systems are provided, self-closing doors **shall not be**[~~are not~~] required if effective odor and insect entry control is demonstrated.

(e) In school restroom and locker room facilities used by small children, any self-closing devices on all doors shall be adjusted to provide closure without presenting a safety hazard to students.

Section **5.**[~~6.~~] Lighting. (1)**(a)** All school classrooms, study rooms, industrial arts shops, gymnasiums, enclosed swimming pools, auditoriums, stairways, and hallways shall be adequately lighted.

(b) All lighting shall be installed so that glare will be eliminated.

(c) Illumination levels as listed below shall be provided as measured at a height of thirty (30) inches above the floor:

Task or Area	Foot-candle Levels
Storage rooms	10
Hallways, stairways, auditoriums (during entry and exit)	20
General classrooms, gymnasiums, and enclosed swimming pools	50

(d) In certain areas such as industrial arts work benches, power tool locations, welding, and foundry locations, art work benches, home economics kitchens, and laboratories, additional spot illumination shall be provided if necessary to maintain adequate lighting especially if safety hazards are present.

(2) Windows, shades, and light fixtures shall be kept clean and in good repair at all times the school is in session.

Section **6.**[~~7.~~] Building, Heating and Ventilation. (1) All walls, ceilings, floors, furniture, drapes, curtains, and blinds shall be kept in good repair.

(2)**(a)** All floors shall be kept clean and free of litter.

(b) All walls, ceilings, furniture, drapes, curtains, and blinds shall be kept clean.

(c) All floors shall be cleaned using dustless methods.

(d) Special attention shall be given to maintain floor areas around drinking fountains and toilet and hand-washing facilities free of water spillage.

(3) School buildings shall be maintained free of insect or rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall be pursuant to applicable state laws and administrative regulations.

(4) School buildings shall maintain a minimum indoor temperature for occupied spaces of 68 degrees Fahrenheit at a point measured thirty (30) inches above the floor. The installation of portable space heaters shall not be used to achieve compliance.

(5) Schools with ten (10) or more students shall provide sufficient storage space for outer clothing, play equipment, school supplies, and student's sack lunches. This space shall be easily accessible, well lighted, easily cleanable, ventilated and be designed, constructed, and maintained to reduce fire hazards.

(6)**(a)**[~~(5)~~] Adequate storage space shall be provided for the storage of janitorial supplies and combustible or poisonous materials and shall be kept locked at all times when not under direct supervision by maintenance staff or faculty.

(b) All janitorial or other supplies of a poisonous, caustic, or combustible nature shall be stored in the original container or, if dispensed from bulk containers, only in properly identified containers designed for that use.

(c) All poisonous, caustic, and combustible materials shall be

stored in an[a] area[separate and apart] from food products.

(d)[The use of]Soft drink or other food or drink containers **shall not be used** for storage of toxic materials[is expressly prohibited].

Section 7.[8.] Safety. (1)(a) All school buildings shall have approved-type fire extinguishers provided of sufficient number and fire rating type as determined by the State Fire Marshal or local fire departments.

(b) All exits shall comply with the requirements of the State Fire Marshal.

(2) Each school building shall have adequate first aid material available and easily accessible and shall be equipped with the following items:

(a) Compresses and bandages to include:

1. A one (1) inch compress-on adhesive;

2. Assorted sterile bandage compresses in individual packages;

3. Triangular bandages (2 in. x 2 in.) and (4 in. x 4 in.)[(two (2) x two (2)) and (four (4) x four (4))]; and

4. Sterile gauze in individual packages of about one (1) square yard one (1) inch and two (2) inch rolled;[.]

(b) Wire or thin board splints;

(c) Adhesive tape;

(d) Scissors;

(e) Forceps (two (2) inch splinter);

(f) Toothpicks;

(g) Paper cups;

(h) Disposable facial tissues;

(I) Aromatic spirits of ammonia;

(j) Thermometer;

(k) Soap;

(l) Petroleum jelly;

(m) Biohazard waste bags;

(n) Nonlatex gloves;

(o) Cotton balls;

(p) One-way resuscitation mask;

(q) Water source **or**[/] normal saline;

(r) Ice packs (chemical ice bags);

(s) Resealable plastic bags;

(t) Telephone number of the nearest Poison Control Center;

(u) Safety pins; and

(v) Flashlight with spare batteries.

(3) A current edition of the Red Cross First Aid Manual shall be available **in each school building.**

(4)[.] The principal, head teacher, or a designated faculty member shall possess current, valid certification in the Red Cross Multimedia or Standard First Aid courses to render trained aid in case of injury.

(5)(a)[(3)] All play areas shall be designed, landscaped, and protected to provide a safe place for children to play.

(b) There shall be no obstructions in the area, and the ground shall be well drained and relatively level.

(c) Wells, cisterns, sewage treatment plants, and other open pits shall be fenced, have securely sealed tops, or otherwise be suitably protected to prevent safety hazards to students.

(6)(a)[(4)] All playground equipment shall be designed and constructed for heavy usage and shall be maintained in good repair and in safe condition.

(b) Any playground equipment found to be in defective condition which presents a safety hazard shall be immediately dismantled or otherwise rendered inaccessible to students until it is repaired or replaced.

(c) The electrical system, wiring, fixtures, and equipment shall be designed, constructed, installed, and maintained pursuant to **815 KAR 7120 and 10:060.**

(d)[the National Electrical Code and other applicable codes and regulations. The use of] Spliced electrical extension cords or other nonapproved electrical wiring, fixtures, or equipment **shall not be used.**

(e)[is strictly prohibited.] Buildings and equipment shall be maintained to eliminate potential danger from holes, glass, splinters, sharp projections, and other hazardous conditions.

(5) All school buses shall be maintained clean, free of litter and dust, and free of sharp projections or other safety hazards in the entrance and interior seating area.

Section 8.[9.] Inspection of Schools. (1) At least once each six (6) months, the cabinet shall inspect each school and shall make additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) If a representative of the cabinet makes an inspection of a school, he shall record his findings on Form DFS-301, "School Inspection Report", and provide the principal or head teacher with a copy. The inspection report shall:

(a) Set forth **each specific violation**[the specific violation(s)] if found;

(b) Establish a specific and reasonable period of time for the correction of **each violation**[the violation(s)] found;

(c) State that failure to comply with any notice issued **shall**[pursuant to the provisions of this administrative regulation may] result in further action being taken; and

(d) Advise the party inspected of its right to request a hearing on Form DFS-212, "Request for **Conference", which is incorporated by reference in 902 KAR 1:400,**[Hearing"] before the cabinet. The request shall be filed within ten (10) days of the completed inspection.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

(4) Following inspections of school buildings and premises[required by this administrative regulation], the cabinet shall report suspected noncompliance with applicable requirements of other state agencies to those agencies.

Section 9.[10.] Plan review of future construction. **A person shall not begin to construct or extensively alter a school, or convert an existing structure for use as a school, until construction plans and specifications meeting the requirements of subsection (2) of this section have been:**

(a) Submitted to the cabinet for its review; and

(b) After approval by the cabinet, submitted to the Energy and Environment Cabinet for final approval.

(2) The plans and specifications shall:

(a) Show the layout, arrangements, and construction materials;

(b) Show the location, size, and type of fixed equipment and facilities; and

(c) Include a plumbing riser diagram.[No person shall construct or extensively alter a school, or convert an existing structure for use as a school, until construction plans and specifications for such construction or alteration, showing layout, arrangements, and construction materials, and the location, size, and type of fixed equipment and facilities and a plumbing riser diagram, have been submitted to and reviewed first by the Cabinet's designees or the cabinet prior to submission to the Environment and Public Protection Cabinet for final approval before such work is begun.]

Section 10.[11.] Existing Facilities and Equipment. [Notwithstanding the other provisions of this administrative regulation,]Facilities and equipment being used by existing schools on **October 9, 1984**[the effective date of this administrative regulation], which do not fully meet the design and construction requirements of this administrative regulation, may be continued in use, if **the facility or equipment:**

(1) Is in good repair;

(2) Is capable being maintained in a sanitary condition; and

(3) Creates no health or safety hazards.

Section 11. Incorporation by Reference. (1) Form DFS-301, " School Inspection Report", rev. 2/97, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Ky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.[in good repair, capable of being maintained in a sanitary condition, and create no health or safety hazard.]

WILLIAM D. HACKER, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: July 12, 2008
FILED WITH LRC: July 14, 2008 at 9 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Provider Operations
(As Amended at ARRS, September 9, 2008)

907 KAR 1:026. Dental services.

RELATES TO: KRS 205.520, 205.8451, 42 U.S.C. 1396a-d
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a-d, Pub.L. 109-171
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to dental services.

Section 1. Definitions. (1) "Comprehensive orthodontic" means a medically necessary dental service for treatment of a dentofacial malocclusion which requires the application of braces for correction.
(2) "Current Dental Terminology" or "CDT" means a publication by the American Dental Association of codes used to report dental procedures or services.
(3) "Debridement" means a procedure that is performed:
(a) For removing thick or dense deposits on the teeth which is required if tooth structures are so deeply covered with plaque and calculus that a dentist or staff cannot check for decay, infections, or gum disease; and
(b) Separately from a regular cleaning and is usually a preliminary or first treatment when an individual has developed very heavy plaque or calculus.
(4) "Department" means the Department for Medicaid Services or its designee.
(5) **"Direct practitioner contact" means the billing dentist or oral surgeon is physically present with and evaluates, examines, treats, or diagnoses the recipient.**
(6) "Disabling malocclusion" means that a patient has a condition that meets the criteria established in Section 13(7) of this administrative regulation.
[~~(6) "Direct practitioner contact" means the billing dentist or oral surgeon is physically present with and evaluates, examines, treats, or diagnoses the recipient.~~]
(7) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:
(a) Requires little additional practitioner resources; or
(b) Is clinically integral to the performance of the primary procedure.
(8) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.
(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(10) "Mutually exclusive" means that two (2) procedures:
(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;
(b) Represent two (2) methods of performing the same procedure;
(c) Represent medically impossible or improbable use of CDT codes; or
(d) Are described in CDT as inappropriate coding of procedure combinations.
(11) "Other licensed medical professional" means a health care provider other than a dentist who has been approved to practice a medical specialty by the appropriate licensure board.
(12) "Prepayment review" or "PPR" means a departmental review of a claim to determine if the requirements of this administrative regulation have been met prior to authorizing payment.
(13) "Prior authorization" or "PA" means approval which a provider shall obtain from the department before being reimbursed for a covered service.
(14) "Provider" is defined in KRS 205.8451(7).
(15) "Recipient" is defined in KRS 205.8451(9).
(16) "Resident" is defined in 42 C.F.R. 415.152.
(17) "Timely filing" means receipt of a claim by Medicaid:
(a) Within twelve (12) months of the date the service was provided;
(b) Within twelve (12) months of the date retroactive eligibility was established; or
(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

Section 2. Conditions of Participation. (1) A participating provider shall be licensed as a provider in the state in which the practice is located.
(2) A participating provider shall comply with the terms and conditions established in the following administrative regulations:
(a) 907 KAR 1:005[~~, Nonduplication of payments~~];
(b) 907 KAR 1:671[~~; Conditions of Medicaid provider participation, withholding overpayments, administrative appeal process, and sanctions~~]; and
(c) 907 KAR 1:672[~~; Provider enrollment, disclosure, and documentation for Medicaid participation~~].
(3) A participating provider shall comply with the requirements to maintain the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164.
(4) A participating provider shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of the decision prior to the delivery of service. If the provider accepts the recipient, the provider:
(a) Shall bill Medicaid rather than the recipient for a covered service;
(b) May bill the recipient for a service not covered by Kentucky Medicaid, if the provider informed the recipient of noncoverage prior to providing the service; and
(c) Shall not bill the recipient for a service that is denied by the department for:
1. Being:
a. Incidental;
b. Integral; or
c. Mutually exclusive;
2. Incorrect billing procedures, including incorrect bundling of procedures;
3. Failure to obtain prior authorization for the service; or
4. Failure to meet timely filing requirements.

Section 3. Record Maintenance. (1) A provider shall maintain comprehensive legible medical records which substantiate the services billed.
(2) A medical record shall be signed by the provider and dated to reflect the date of service.
(3) An X-ray shall be of diagnostic quality and shall include the:
(a) Recipient's name;
(b) Service date; and
(c) Provider's name.
(4) A treatment regimen shall be documented to include:
(a) Diagnosis;
(b) Treatment plan;
(c) Treatment and follow-up; and
(d) Medical necessity.
(5) Medical records, including x-rays, shall be maintained in accordance with 907 KAR 1:672, Section 4(3) and (4).

Section 4. General Coverage Requirements. (1) A covered service shall be:

(a) Medically necessary;

(b) Except as provided in subsection (2) of this section, furnished to a recipient through direct practitioner contact; and

(c) Unless a recipient's provider demonstrates that dental services in excess of the following service limitations are medically necessary, limited to:

1. Two (2) prophylaxis per twelve (12) month period for a recipient under age twenty-one (21);

2. One (1) dental visit per month per provider for a recipient age twenty-one (21) years and over; and

3. One (1) prophylaxis per twelve (12) month period for a recipient age twenty-one (21) years and over.

(2) A covered service provided by an individual who meets the definition of other licensed medical professional shall be covered if the:

(a) Individual is employed by the supervising oral surgeon, dentist, or dental group;

(b) Individual is licensed in the state of practice; and

(c) Supervising provider has direct practitioner contact with the recipient, except for a service provided by a dental hygienist if the dental hygienist provides the service under general supervision of a practitioner in accordance with KRS 313.310.

(3)(a) A medical resident may provide services if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.170, 415.172, and 415.174.

(b) A dental resident, student, or dental hygiene student may provide services under the direction of a program participating provider in or affiliated with an American Dental Association accredited institution.

(4) Coverage shall be limited to services identified in 907 KAR 1:626, Section 3, in the following CDT categories:

(a) Diagnostic;

(b) Preventive;

(c) Restorative;

(d) Endodontics;

(e) Periodontics;

(f) Removable prosthodontics;

(g) Maxillofacial prosthetics;

(h) Oral and maxillofacial surgery;

(i) Orthodontics; or

(j) Adjunctive general services.

Section 5. Diagnostic Service Coverage Limitations. (1)(a) Except as provided in paragraph (b) of this subsection, coverage for a comprehensive oral evaluation shall be limited to one (1) per twelve (12) month period, per recipient, per provider.

(b) The department shall cover a second comprehensive oral evaluation if the evaluation is provided in conjunction with a prophylaxis to an individual under twenty-one (21) years of age.

(c) A comprehensive oral evaluation shall not be covered in conjunction with the following:

1. A limited oral evaluation for trauma related injuries;

2. Space maintainers;

3. Root canal therapy;

4. Denture relining;

5. Transitional appliances;

6. A prosthodontic service;

7. Temporomandibular joint therapy;

8. An orthodontic service;

9. Palliative treatment; or

10. A hospital call.

(2)(a) Coverage for a limited oral evaluation shall:

1. Be limited to a trauma related injury or acute infection;

2. Be limited to one (1) per date of service, per recipient, per provider; and

3. Require a prepayment review.

(b) A limited oral evaluation shall not be covered in conjunction with another service except for:

1. A periapical x-ray;

2. Bitewing x-rays;

3. A panoramic x-ray;

4. Resin, anterior;

5. A simple or surgical extraction;

6. Surgical removal of a residual tooth root;

7. Removal of a foreign body;

8. Suture of a recent small wound;

9. Intravenous sedation; or

10. Incision and drainage of infection.

(3)(a) Except as provided in paragraph (b) of this subsection, the following limitations shall apply to coverage of a radiograph service:

1. Bitewing x-rays shall be limited to four (4) per twelve (12) month period, per recipient, per provider;

2. Periapical x-rays shall be limited to fourteen (14) per twelve (12) month period, per recipient, per provider;

3. An intraoral complete x-ray series shall be limited to one (1) per twelve (12) month period, per recipient, per provider;

4. Periapical and bitewing x-rays shall not be covered in the same twelve (12) month period as an intraoral complete x-ray series per recipient, per provider;

5. A panoramic film shall:

a. Be limited to one (1) per twenty-four (24) month period, per recipient, per provider; and

b. Require prior authorization in accordance with Section 15(2) and (3) of this administrative regulation for a recipient under age six (6);

6. A cephalometric film shall be limited to one (1) per twenty-four (24) month period, per recipient, per provider; or

7. Cephalometric and panoramic x-rays shall not be covered in conjunction with a comprehensive orthodontic consultation.

(b) The limits established in paragraph (a) of this subsection shall not apply to:

1. An x-ray necessary for a root canal or oral surgical procedure; or

2. An x-ray that exceeds the established service limitations and is determined by the department to be medically necessary.

Section 6. Preventive Service Coverage Limitations. (1)(a) Coverage of a prophylaxis shall be limited to:

1. For an individual twenty-one (21) years of age and over, one (1) per twelve (12) month period, per recipient; and

2. For an individual under twenty-one (21) years of age, two (2) per twelve (12) month period, per recipient.

(b) A prophylaxis shall not be covered in conjunction with periodontal scaling or root planing.

(2)(a) Coverage of a sealant shall be limited to:

1. A recipient age five (5) through twenty (20) years;

2. Each six (6) and twelve (12) year molar once every four (4) years with a lifetime limit of three (3) sealants per tooth, per recipient; and

3. An occlusal surface that is noncarious.

(b) A sealant shall not be covered in conjunction with a restorative procedure for the same tooth on the same date of service.

(3)(a) Coverage of a space maintainer shall:

1. Be limited to a recipient under age twenty-one (21); and

2. Require the following:

a. Fabrication;

b. Insertion;

c. Follow-up visits;

d. Adjustments; and

e. Documentation in the recipient's medical record to:

(i) Substantiate the use for maintenance of existing intertooth space; and

(ii) Support the diagnosis and a plan of treatment that includes follow-up visits.

(b) The date of service for a space maintainer shall be considered to be the date the appliance is placed on the recipient.

(c) Coverage of a space maintainer, an appliance therapy specified in the CDT orthodontic category, or a combination thereof shall not exceed two (2) per twelve (12) month period, per recipient.

Section 7. Restorative Service Coverage Limitations. (1) A four (4) or more surface resin-based anterior composite procedure shall not be covered if performed for the purpose of cosmetic bonding or veneering.

(2) Coverage of a prefabricated crown shall be:

(a) Limited to a recipient under age twenty-one (21); and

(b) Inclusive of any procedure performed for restoration of the same tooth.

(3) Coverage of a pin retention procedure shall be limited to:

(a) A permanent molar;

(b) One (1) per tooth, per date of service, per recipient; and

(c) Two (2) per permanent molar, per recipient.

(4) Coverage of a restorative procedure performed in conjunction with a pin retention procedure shall be limited to one (1) of the following:

(a) An amalgam, three (3) or more surfaces;

(b) A permanent prefabricated resin crown; or

(c) A prefabricated stainless steel crown.

Section 8. Endodontic Service Coverage Limitations. (1) Coverage of the following endodontic procedures shall be limited to a recipient under age twenty-one (21):

(a) A pulp cap direct;

(b) Therapeutic pulpotomy; or

(c) Root canal therapy.

(2) A therapeutic pulpotomy shall not be covered if performed in conjunction with root canal therapy.

(3)(a) Coverage of root canal therapy shall require:

1. Treatment of the entire tooth;

2. Completion of the therapy; and

3. An x-ray taken before and after completion of the therapy.

(b) The following root canal therapy shall not be covered:

1. The Sargenti method of root canal treatment; or

2. A root canal on one (1) root of a molar.

Section 9. Periodontic Service Coverage Limitations. (1) Coverage of a gingivectomy or gingivoplasty procedure shall require prepayment review and shall be limited to:

(a) A recipient with gigival overgrowth due to a:

1. Congenital condition;

2. Hereditary condition; or

3. Drug-induced condition; and

(b) One (1) per tooth or per quadrant, per provider, per recipient per twelve (12) month period.

1. Coverage of a quadrant procedure shall require a minimum of a three (3) tooth area within the same quadrant.

2. Coverage of a per-tooth procedure shall be limited to no more than two (2) teeth within the same quadrant.

(2) Coverage of a gingivectomy or gingivoplasty procedure shall require documentation in the recipient's medical record that includes:

(a) Pocket-depth measurements;

(b) A history of nonsurgical services; and

(c) Prognosis.

(3) Coverage for a periodontal scaling and root planing procedure shall:

(a) Not exceed one (1) per quadrant, per twelve (12) months, per recipient, per provider;

(b) Require prior authorization in accordance with Section 15(2) and (4) of this administrative regulation; and

(c) Require documentation to include:

1. A periapical film or bitewing x-ray; and

2. Periodontal charting of preoperative pocket depths.

(4) Coverage of a quadrant procedure shall require a minimum of a three (3) tooth area within the same quadrant.

(5) Periodontal scaling and root planing shall not be covered if performed in conjunction with dental prophylaxis.

(6)(a) A full mouth debridement shall only be covered for a pregnant woman.

(b) Only one (1) full mouth debridement per pregnancy shall be covered.

Section 10. Prosthodontic Service Coverage Limitations. (1) A removable prosthodontic or denture repair shall be limited to a recipient under age twenty-one (21).

(2) A denture repair in the following categories shall not exceed three (3) repairs per twelve (12) month period, per recipient:

(a) Repair resin denture base; or

(b) Repair cast framework.

(3) Coverage for the following services shall not exceed one (1) per twelve (12) month period, per recipient:

(a) Replacement of a broken tooth on a denture;

(b) Laboratory relining of:

1. Maxillary dentures; or

2. Mandibular dentures;

(c) An interim maxillary partial denture; or

(d) An interim mandibular partial denture.

(4) An interim maxillary or mandibular partial denture shall be limited to use:

(a) During a transition period from a primary dentition to a permanent dentition;

(b) For space maintenance or space management; or

(c) As interceptive or preventive orthodontics.

Section 11. Maxillofacial Prosthetic Service Coverage Limitations. The following services shall be covered if provided by a board certified prosthodontist:

(1) A nasal prosthesis;

(2) An auricular prosthesis;

(3) A facial prosthesis;

(4) A mandibular resection prosthesis;

(5) A pediatric speech aid;

(6) An adult speech aid;

(7) A palatal augmentation prosthesis;

(8) A palatal lift prosthesis;

(9) An oral surgical splint; or

(10) An unspecified maxillofacial prosthetic.

Section 12. Oral and Maxillofacial Service Coverage Limitations. (1) The simple use of a dental elevator shall not constitute a surgical extraction.

(2) Root removal shall not be covered on the same date of service as the extraction of the same tooth.

(3) Coverage of surgical access of an unerupted tooth shall:

(a) Be limited to exposure of the tooth for orthodontic treatment; and

(b) Require prepayment review.

(4) Coverage of alveoplasty shall:

(a) Be limited to one (1) per quadrant, per lifetime, per recipient; and

(b) Require a minimum of a three (3) tooth area within the same quadrant.

(5) An occlusal orthotic device shall:

(a) Be covered for tempormandibular joint therapy;

(b) Require prior authorization in accordance with Section 15(2) and (5) of this administrative regulation;

(c) Be limited to a recipient under age twenty-one (21); and

(d) Be limited to one (1) per lifetime, per recipient.

(6) Frenulectomy shall be limited to one (1) per date of service.

(7) Coverage shall be limited to one (1) per lifetime, per recipient, for removal of the following:

(a) Torus palatinus (maxillary arch);

(b) Torus mandibularis (lower left quadrant); or

(c) Torus mandibularis (lower right quadrant).

(8) Except as specified in subsection (9)[~~(8)~~] of this section, a service provided by an oral surgeon shall be covered in accordance with 907 KAR 3:005[~~, Physicians' services~~].

(9)[~~(8)~~] If performed by an oral surgeon, coverage of a service identified in CDT shall be limited to:

(a) Extractions;

(b) Impactions; and

(c) Surgical access of an unerupted tooth.

Section 13. Orthodontic Service Coverage Limitations. (1) Coverage of an orthodontic service shall:

(a) Be limited to a recipient under age twenty-one (21); and

(b) Require prior authorization.

(2) The combination of space maintainers and appliance therapy shall be limited to two (2) per twelve (12) month period, per recipient.

(3) Space maintainers and appliance therapy shall not be covered in conjunction with comprehensive orthodontics.

(4) The department shall only cover new orthodontic brackets or appliances.

(5) An appliance for minor tooth guidance shall not be covered for the control of harmful habits.

(6) In addition to the limitations specified in subsection (1) of this section, a comprehensive orthodontic service shall:

(a) Require a referral by a dentist; and

(b) Be limited to:

1. The correction of a disabling malocclusion; or

2. Transitional or full permanent dentition unless for treatment of a cleft palate or severe facial anomaly.

(7) A disabling malocclusion shall exist if a patient:

(a) Has a deep impinging overbite that shows palatal impingement of the majority of the lower incisors;

(b) Has a true anterior open bite that does not include:

1. One (1) or two (2) teeth slightly out of occlusion; or

2. Where the incisors have not fully erupted;

(c) Demonstrates a significant antero-posterior discrepancy (Class II or III malocclusion that is comparable to at least one (1) full tooth Class II or III, dental or skeletal);

(d) Has an anterior crossbite that involves:

1. More than two (2) teeth in crossbite;

2. Obvious gingival stripping; or

3. Recession related to the crossbite;

(e) Demonstrates handicapping posterior transverse discrepancies which:

1. May include several teeth, one (1) of which shall be a molar; and

2. Is handicapping in a function fashion as follows:

a. Functional shift;

b. Facial asymmetry;

c. Complete buccal or lingual crossbite; or

d. Speech concern;

(f) Has a significant posterior open bite that does not involve:

1. Partially erupted teeth; or

2. One (1) or two (2) teeth slightly out of occlusion;

(g) Except for third molars, has impacted teeth that will not erupt into the arches without orthodontic or surgical intervention;

(h) Has extreme overjet in excess of eight (8) to nine (9) millimeters and one (1) of the skeletal conditions specified in paragraphs (a) through (g) of this subsection;

(i) Has trauma or injury resulting in severe misalignment of the teeth or alveolar structures, and does not include simple loss of teeth with no other affects;

(j) Has a congenital or developmental disorder giving rise to a handicapping malocclusion;

(k) Has a significant facial discrepancy requiring a combined orthodontic and orthognathic surgery treatment approach; or

(l) Has developmental anodontia in which several congenitally missing teeth result in a handicapping malocclusion or arch deformation.

(8) Coverage of comprehensive orthodontic treatment shall not be inclusive of orthognathic surgery.

(9) If comprehensive orthodontic treatment is discontinued prior to completion, the provider shall submit to the department:

(a) A referral form, if applicable; and

(b) A letter detailing:

1. Treatment provided, including dates of service;

2. Current treatment status of the patient; and

3. Charges for **the** treatment provided.

(10) Remaining portions of comprehensive orthodontic treatment may be authorized for prorated coverage upon submission of the prior authorization requirements specified in Section 15(2) and (7) of this administrative regulation if treatment:

(a) Is transferred to another provider; or

(b) Began prior to Medicaid eligibility.

Section 14. Adjunctive General Service Coverage Limitations. (1)(a) Coverage of palliative treatment for dental pain shall be limited to one (1) per date of service, per recipient, per provider.

(b) Palliative treatment for dental pain shall not be covered in conjunction with another service except radiographs.

(2)(a) Coverage of a hospital call shall be limited to one (1) per date of service, per recipient, per provider.

(b) A hospital call shall not be covered in conjunction with:

1. Limited oral evaluation;

2. Comprehensive oral evaluation; or

3. Treatment of dental pain.

(3)(a) Coverage of intravenous sedation shall be limited to a recipient under age twenty-one (21).

(b) Intravenous sedation shall not be covered for local anesthesia or nitrous oxide.

Section 15. Prior Authorization. (1) Prior authorization shall be required for the following:

(a) A panoramic film for a recipient under age six (6);

(b) Periodontal scaling and root planing;

(c) An occlusal orthotic device;

(d) A preorthodontic treatment visit;

(e) Removable appliance therapy;

(f) Fixed appliance therapy; or

(g) A comprehensive orthodontic service.

(2) A provider shall request prior authorization by submitting the following information to the department:

(a) A MAP-9, Prior Authorization for Health Services;

(b) Additional forms or information as specified in subsections (3) through (7) of this section; and

(c) Additional information required to establish medical necessity if requested by the department.

(3) A request for prior authorization of a panoramic film shall include a letter of medical necessity.

(4) A request for prior authorization of periodontal scaling and root planing shall include periodontal charting of preoperative pocket depths.

(5) A request for prior authorization of an occlusal orthotic device shall include a MAP 306, Temporomandibular Joint (TMJ) Assessment Form.

(6) A request for prior authorization of removable and fixed appliance therapy shall include:

(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;

(b) Panoramic film or intraoral complete series; and

(c) Dental models.

(7) A request for prior authorization for comprehensive orthodontic services shall include:

(a) A MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form;

(b) A MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement;

(c) Cephalometric x-rays with tracing;

(d) A panoramic x-ray;

(e) Intraoral and extraoral facial frontal and profile pictures;

(f) Occluded and trimmed dental models;

(g) An oral surgeon's pretreatment work up notes if orthognathic surgery is required;

(h) After six (6) monthly visits are completed, but not later than twelve (12) months after the banding date of service:

1. A MAP 559, Six (6) Month Orthodontic Progress Report; and

2. An additional MAP 9, Prior Authorization for Health Services; and

(i) Within three (3) months following completion of the comprehensive orthodontic treatment:

1. Beginning and final records; and

2. A MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission.

(8) Upon receipt and review of the materials required in subsection (7)(a) through (g) of this section, the department may request a second opinion from another provider regarding the proposed comprehensive orthodontic treatment.

(9) If a service that requires prior authorization is provided before the prior authorization is received, the provider shall assume the financial risk that the prior authorization may not be subsequently approved.

(10) Prior authorization shall not be a guarantee of recipient eligibility. Eligibility verification shall be the responsibility of the provider.

(11) Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered bene-

fit shall be available to all recipients without prior authorization.

Section 16. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 9, Prior Authorization for Health Services", December 1995 edition;

(b) "MAP 9A, Kentucky Medicaid Program Orthodontic Services Agreement", December 1995 edition;

(c) "MAP 306, Temporomandibular Joint (TMJ) Assessment Form", December 1995 edition;

(d) "MAP 396, Kentucky Medicaid Program Orthodontic Evaluation Form", March 2001 edition;

(e) "MAP 559, Six (6) Month Orthodontic Progress Report", December 1995 edition; and

(f) "MAP 700, Kentucky Medicaid Program Orthodontic Final Case Submission", December 1995 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 11, 2008

FILED WITH LRC: July 14, 2008 at 9 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, September 9, 2008)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS Chapter 13B, 199.011, 199.640-199.680, 199.801, 600.020(23), 605.090(1)(b), (d), 610.110, **2008 Ky Acts ch. 127 Part 1, H.10(3)**[~~Ky. Acts ch. 252 Part 1, H.10(7),~~] 42 U.S.C. 672,[~~OMB Circular A-122~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by KRS 600.020(23).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care, which includes the following:

(a) DPP-886, Private Child Care Client Inter-agency Referral Form;

(b) DPP-886A, Application for Referral and Needs Assessment; and

(c) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or
2. Child Behavior Checklist For Ages 6-18; (Achenbach)

(11) "Model program cost analysis" is defined by KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2)**(a)** Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator**.**

(b) The district placement coordinator[~~who~~] shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement; and

(b) Arrange transportation for the child to the placement.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;[~~and~~]

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed DPP-886, Private Child Care Client Inter-agency Referral Form, to the department;

(3) Reassess a child[~~through a~~] utilization review:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b)1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the **previous** level has expired;

(5) Monitor each child-caring facility and child-placing agency; and

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes.

Section 4. Levels of Care. **A level of care shall be assigned in accordance with the following standards:**

(1) A Level I child requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence when the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others;

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.

(a) The cabinet shall **base**[~~establish~~] a per diem rate for the care of a child placed by the cabinet in a private child-caring facility,[~~based~~] upon the model program cost analysis defined at KRS 199.641(1)(d).

(b) Each private, nonprofit child caring facility shall report to the cabinet annually, on Form DPP-888, **Cost Report and Time Study and Instructions**[~~cost report and time study data~~].

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined as follows:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet;

(b)**1. For children whose level is determined, the median level of care shall be represented by an index factor of one. (1)**

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.[~~The median number of daily treatment hours for children whose level is:~~

~~1. Determined, the median level of care shall be represented by an index factor of one (1); or~~

~~2. Not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to a child in the median level.~~]

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) **Statewide median**[~~Median~~] cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS

199.641(2)(a). Measurable performance outcomes **shall** include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in **paragraph (a) of this** subsection[~~(6)(a)~~] of this section; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

(a) Reduced length of stay in out-of-home placement;

(b) Increased safety from child abuse or neglect;

(c) Increased number of children moving into and remaining in permanent placement;

(d) Increased number of children and their families cared for in close proximity to their home communities;

(e) Increased number of children reunified with their families;

(f) Increased accountability for success in after care; or

(g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care reimbursement plan shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The **facility**[~~provider~~] shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

(a) Level I - fifty-one (51) dollars and nineteen (19) cents[~~B~~];

(b) Level II - sixty-one (61) dollars and fifty-two (52) cents;

(c) Level III - $109.71;

(d) Level IV- $151.03[~~:~~

~~1. $151.03, effective July 1, 2007 through June 30, 2008; or~~

~~2. $133.80, effective July 1, 2008~~]; and

(e) Level V - $210.64[~~:~~

~~1. $210.64, effective July 1, 2007, through June 30, 2008; or~~

~~2. $189.54, effective July 1, 2008~~].

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) [~~Effective July 1, 2007, through June 30, 2008, the rate for emergency shelter care shall be:~~

~~1.~~] $115.31 per day for a child-caring facility with a treatment license; or

(b)[~~2.~~] $101.41 per day for a child-caring facility without a treatment license.

[~~(b) Effective July 1, 2008, the rate for emergency shelter care shall be:~~

~~1. $102.87 per day for a child-caring facility with a treatment license; or~~

~~2. Ninety (90) dollars and eighty-three (83) cents per day for a child-caring facility without a treatment license.~~]

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be forty-three (43) dollars.

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - seventy-three (73) dollars.

(b) Level III - seventy nine (79) dollars and seventy-eight (78) cents.

(c) Level IV - ninety-seven (97) dollars and eleven (11) cents.

(d) Level V - $134.26.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, forty-three (43) dollars per day, [~~effective July 1, 2007,~~] for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the disability or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child's developmental level consisting of completed forms:

a. Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach); or

b. Child Behavior Checklist for Ages six (6) - eighteen (18) (Achenbach), every six (6) months; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level consisting of a completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology) by the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the following completed forms:

a. On a quarterly basis, for a private child care residential placement, CRP-001, Children's Review Program Residential Application for Level of Care Payment; or

b. On a semiannual basis for a foster care placement, CRP-003, Children's Review Program Foster Care Application for Level of Care Payment;

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment. (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form for an initial or reassigned level;

2. CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization form for a utilization review;

3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment form for a utilization review; or

4. CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment, form for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-004, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive **to the most recent of the following**:

(a) **The**[~~To the~~] date of the most recent utilization review due date; or

(b) The date of admission[~~, whichever is most recent~~].

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-004, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-004, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-004, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;
2. An assessment of the child;
3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and
4. If the child has an IQ of seventy (70) or above:
a. Child Behavior Checklist For Ages one and one-half (1 1/2) - five (5) (Achenbach); or
b. Child Behavior Checklist for Ages six (6) - eighteen (18).
(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.
(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.
(2) Upon receipt of a request for informal resolution, the cabinet shall:
(a) Review the request; and
(b) Render a written decision on the issue raised.
(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", edition 7/00;
(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", edition 6/01;
(c) "CRP-001, Children's Review Program Residential Application for Level of Care Payment", edition 11/04;
(d) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization", edition 11/04;
(e) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment", edition 7/07;
(f) "CRP-004, Children's Review Program Notice of Level of Care Redetermination", edition 11/04;
(g) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", edition 11/04;
(h) "CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment", edition 7/07;
(i) "DPP-114, Level of Care Schedule", edition 6/08[~~7/07~~];
(j) "DPP-886, Private Child Care Client Inter-agency Referral Form",
edition 10/04;
(k) "DPP-886A, Application for Referral and Needs Assessment", edition 07/07;
(l) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", edition 10/04; and
(m) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", edition 1990.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PATRICIA R. WILSON, Commissioner
APRROVED BY AGENCY: June 6, 2008
FILED WITH LRC: June 30, 2008 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES (Amended After Comments)

202 KAR 7:030. Fees of the board.

RELATES TO: KRS 311A.145
STATUTORY AUTHORITY: KRS 311A.145
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.145 authorizes the board to promulgate administrative regulations establishing a reasonable schedule of fees for examinations, licensure, certification, inspections, applications, and other provided services and materials. This administrative regulation establishes those fees.

Section 1. The skills evaluation[~~Examination~~] fee shall be fifty (50) dollars. This fee shall be required of students from all disciplines[~~, which includes the written examination. A retesting fee shall be fifty (50) dollars~~].

Section 2. EMS-TEI. (1) EMS-TEI Application fee shall be $500. This fee includes the licensing fee for the initial five (5) year period[~~$250~~].
(2) EMS-TEI Renewal licensing[~~Application five (5) year review~~] shall be $500 which shall be valid for subsequent five (5) year periods[~~$250~~].
(3) In addition to the licensing fee, an EMS-TEI shall remit an additional fee for each course taught which has the potential to lead to state or national certification or licensure as follows:
(a) Emergency Medical First Responder or First Responder - Fifty (50) dollars;
(b) Emergency Medical Technician or EMT Basic - Seventy (75) dollars;
(c) Emergency Medical Technician Advanced - $150; and
(d) Paramedic- $200[~~EMS-TA initial application fee - $250. This fee shall apply to entities making application to function as a free-standing EMS-TA. An EMS-TEI shall not be required to pay the EMS-TA fee to serve as an EMS-TA if their certification as an EMS-TEI remains in effect.~~
~~(4) EMS-TA application renewal fee - $250~~].

Section 3. Issuance of Certificates and Licenses[~~, Including Reciprocity~~]. (1) The certificate or license or EMS instructor application fee shall be ten (10) dollars.
(2) First responder initial certification fee shall be fifteen (15) dollars.
(3) EMT initial certification fee shall be thirty (30)[~~twenty-five (25)~~] dollars.
(4) Advanced EMT initial certification fee shall be fifty (50) dollars.
(5) Paramedic initial licensure fee shall be sixty-five (65)[~~forty-five (45)~~] dollars.
(6) Level I or II[~~(5)~~] EMS instructor initial certification fee shall be eighty-five (85)[~~seventy-five (75)~~] dollars.
(7) Level III EMS instructor initial certification fee shall be eighty-five (85) dollars.

Section 4. Recertification and Relicensure. (1) First responder recertification fee shall be fifteen (15)[~~ten (10)~~] dollars.
(2) EMT recertification fee shall be twenty-five (25)[~~twenty (20)~~] dollars.
(3) Advanced EMT recertification fee shall be forty (40) dollars.
(4) Paramedic relicensure fee shall be fifty (50)[~~forty (40)~~] dollars.
(5) Level III[~~(4)~~] EMS instructor recertification fee shall be ninety (90)[~~seventy (70)~~] dollars.
(6) Level I and II EMS instructors recertification fee shall be seventy (70) dollars.
(7) The recertification fee for an individual recertifying as a Level I, II, and III EMS Instructor shall be $135.

Section 5. Application for reciprocity or for a temporary certificate for all levels shall be a fee of $125. This fee is in addition to the application fee and initial certification fee for each level[~~seventy-five (75) dollars~~].

Section 6. Ground Ambulance Service Licensing and Relicensing. (1) Initial prelicense fee, to establish compliance with 202 KAR 7:501 shall be $2,500[~~$1,500~~].
(2) Transfer of license fee shall be $1,500[~~$1,000~~] dollars.
(3) [~~Each~~] Additional units requiring[~~unit for~~] inspection in excess of the five (5) units noted in subsection (4) of this section, and which are located at the same location shall be inspected for a fee of thirty (30)[~~twenty-five (25)~~] dollars each.
(4) Relicensure fee for up to, and including, the inspection of five (5) licensed units shall be $500[~~$250~~].
(5) Reinspection required as the result of a cited[~~Relicensure inspection due to major~~] deficiency shall be a fee of $100 per cited deficiency. **The maximum penalty shall not exceed the sum of $500.**
(6) Inspection of additional or replacement units for an existing license[~~Addition or replacement of units to existing license~~] if inspected at the provider's site shall be a fee of $150[~~$100~~] per unit and if inspected at the inspector's site shall be a fee of $100 per unit[~~fifty (50) dollars~~].

Section 7. Administrative Fees. (1) Late fee shall be fifty (50)[~~twenty-five (25)~~] dollars for any recertification or relicensure applicant or any official document required to be received by the KBEMS office, which is postmarked after the due date or expiration date.
(2) Duplicate card, certification, or license fee for each shall be twenty-five (25) dollars.
(3) Application for reinstatement for all levels [~~fee~~] shall be a fee of $150. This fee is in addition to the application fee and initial certification fee for each level[~~seventy-five (75) dollars~~].

Section 8. ALS Medical First Response Providers. (1) Initial license fee to establish compliance with 202 KAR 7:501 shall be $250.
(2) Relicensure inspection up to four (4) vehicles shall be a fee of $200[~~$100 dollars~~].
(3) Each additional unit for inspection shall be a fee of thirty (30)[~~twenty-five (25)~~] dollars.

Section 9. Air Ambulance Service Licensing and Relicensing. (1) Initial prelicensing fee, to establish compliance with 202 KAR 7:510, shall be $5,000.
(2) Transfer of license fee shall be $2,500.
(3) Relicensure fee for up to, and not including, the inspection of five (5) licensed aircraft shall be a fee of $1,000.
(4) Reinspection required as the result of a cited deficiency shall be a fee of $500 per cited deficiency. **The maximum penalty shall not exceed $2,500.**
(5) Inspection of additional or replacement units for an existing license shall be a fee of $250 per unit and shall be inspected at the provider's site.

ROB ROTHENBURGER, Chairman
APPROVED BY AGENCY: September 12, 2008
FILED WITH LRC: September 12, 2008 at 1 p.m.
CONTACT PERSON: Lee W. Rowland, Esq., Legal Counsel, Kentucky Board of Emergency Medical Services, 300 N. Main Street, Versailles, Kentucky 40383, phone (859) 256-3217, fax (859) 256-3127.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lee W. Rowland, Esq.
(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides the

schedule of fees and charges for First Responders, Emergency Medical Technicians, Advanced Emergency Medical Technicians, Paramedics, Educational Institutions, Instructors and Ambulance Providers.

(b) The necessity of this administrative regulation: Establishes the fees for First Responders, Emergency Medical Technicians, Advanced Emergency Medical Technicians, Paramedics, Educational Institutions, Instructors and Ambulance Providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.145 requires the board to prescribe reasonable fee schedules and charges for examination; issuance, renewal, and reinstatement of licenses; issuance, renewal, and reinstatement of certifications; inspections and reinspections; applications; and other services and materials provided by the board

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It established the reasonable fees and charges required by KRS 311A.145 for First Responders, Emergency Medical Technicians, Advanced Emergency Medical Technicians, Paramedics, Educational Institutions, Instructors and Ambulance Providers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It increases certain fees and created new fees.

(b) The necessity of the amendment to this administrative regulation: Increases revenues required by increased costs of operations of the board since 2003 and due to legislative and administrative budget cuts effective in 2008.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.145 requires the board to prescribe a reasonable schedule of fees and charges.

(d) How the amendment will assist in the effective administration of the statutes: It increases the revenues required by increased costs of operations of the board since 2003 and due to legislative and administrative budget cuts effective in 2008.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 650 First Responders; 5,450 Emergency Medical Technicians; 58 Advanced Emergency Medical Technicians; 1,400 Paramedics; 255 Instructors; 45 Educational Institutions; 235 Ground Ambulance Services; 1 ALS Medical First Response Agency and 12 Air Ambulance Services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None known.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Only the fee established in the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The efficient operation of the board's systems office.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Minimal cost.

(b) On a continuing basis: Minimal cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees and charges collected pursuant to the established fee schedules.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It directly establishes and increases fees.

(9) TIERING: Is tiering applied? Yes tiering is applied. Paramedics pay higher fees than Advanced Emergency Medical Technicians, Emergency Medical Technicians and First Responders due to heightened skills, procedures and responsibilities; Advanced Emergency Medical Technicians pay higher fees than Emergency Medical Technicians and First Responders due to heightened skill, procedures and responsibilities; and Emergency Medical Technicians pay higher fees than First Responders due to heightened skill, procedures and responsibilities. Instructors are separate. Air ambulance services pay higher fees than ground ambulance services due to the fact they have a large service area. Also due to the geographical location of their aircraft the board incurs additional expense in the inspection and oversight of the air ambulance services.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Any local county or city governments or fire departments that operate ambulance services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.145

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. It will increase the expenditures if any local county or city governments or fire departments incurs such fees as part of its operation of ambulance services in that this regulation sets fees at a higher than current rates. There has been no alteration to the fee structure since November, 2003.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown if it will generate any revenue for local county or city governments or fire departments that operate ambulance services.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Same as initial year as stated in (a).

(c) How much will it cost to administer this program for the first year? Minimal

(d) How much will it cost to administer this program for subsequent years? Minimal

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. See attached spread sheet for breakdown of anticipated single year revenue growth.

Revenues (+/-): $199,420

Expenditures (+/-): Minimal

Other Expenditures (+/-): Unknown

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.990[~~150.470, 150.990(2)~~]

STATUTORY AUTHORITY: KRS 150.025,[~~150.025(1),~~] 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025[~~150.025(1)~~] authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. KRS 150.470 authorizes the department to promulgate creel and size limits for fish. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. This administrative regulation establishes fish size limits, daily catch limits, and field possession limits

for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:
(a) Made of:
1. Wood;
2. Metal;
3. Plastic;
4. Feathers;
5. Preserved pork rind; or
6. A similar inert material; and
(b) Not having attached:
1. An insect;
2. Minnow;
3. Fish egg;
4. A worm;
5. Corn;
6. Cheese;
7. Cut bait; or
8. Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell.

(2) "Chumming" means placing substances in the water[~~placing materials upon which fish might eat in the water~~] for the purpose of attracting fish to a particular area.[~~in order that they might be taken.~~]

(3) "Cull" means to replace a live fish in the daily creel limit with another fish of the same species.

(4) "Daily limit" or "creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day[~~or have in possession~~] while fishing.

(5) "Daylight hours" are defined by KRS 150.010(6).

(6) "Kentucky bass" means the following with a patch of teeth on its tongue:
(a) Largemouth bass;
(b) Kentucky bass; or
(c) Coosa bass.

(7) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams unless otherwise stated in Section 4 of this administrative regulation.

(8) "Length" means the distance of a fish which is measured while laid flat on a ruler with the mouth closed and tail lobes squeezed together.

(9) "Possession limit" means the maximum number of unprocessed fish a person may hold[~~in the field~~] after two (2) or more days of fishing. Unless otherwise stated in Section 4 of this administrative regulation, the maximum number shall be two (2) times the daily creel limit for each fish species with a daily creel limit.

(10) "Processed fish" means a fish that has been gutted and head removed.

(11)[~~(10)~~] "Recreational fishing" means the act of taking or attempting to take for personal use, and not for sale, any freshwater fish species by traditional fishing methods, including a line that is held in the hand or is attached to a rod that is held in the hand or closely attended, and to which one or more hooks are attached.

(12)[~~(11)~~] "Release" means to return a fish:
(a) In the best possible physical condition;
(b) Immediately after removing the hook;
(c) To the water from which it was taken; and
(d) In a place where the fish's immediate escape shall not be prevented.

(13)[~~(12)~~] "Seasonal catch and release for trout season" means a trout stream with a specific time period when no trout shall be harvested or possessed and where the use of artificial bait is the only bait permitted.

(14)[~~(13)~~] "Single hook" means a hook with no more than one (1) point.

(15)[~~(14)~~] "Size limit" means the minimum legal length of a fish.

(16)[~~(15)~~] "Slot limit" means that a person:
(a) Shall release fish within a specified minimum and maximum size; and
(b) May keep fish above and below the protected size range.

(17) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Size, Creel, and Possession Limits.[~~Statewide Size and Creel Limits.~~] (1) Except as established[~~specified~~] in Section 4 of this administrative regulation or by 301 KAR 1:180, a person fishing in public or private waters shall observe the following daily and size limits, with the possession limit being two (2) times the daily limit.[~~daily possession and size limits.~~]

(a) Black bass: daily limit, six (6).[~~; possession limit, twelve (12).~~]
1. Largemouth bass and smallmouth bass: size limit, twelve (12) inches.
2. Kentucky bass and Coosa bass: no size limit.

(b) Rock bass: daily limit, fifteen (15).[~~; possession limit, thirty (30); no size limit.~~]

(c) Sauger, walleye, and their hybrids: daily limit, singly or in combination, six (6);[~~possession limit, twelve (12);~~] size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge: daily limit, one (1),[~~possession limit, two (2);~~] size limit, thirty (30) inches.

(e) Chain pickerel: daily limit, five (5);[~~possession limit, ten (10);~~] no size limit.

(f) White bass, hybrid striped bass, and yellow bass, singly or in combination: daily limit, fifteen (15);[~~possession limit, thirty (30);~~] size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass daily limit, five (5): daily and possession limit, five (5); size limit, fifteen (15) inches.

(h) Crappie: daily limit, thirty (30); [~~possession limit, sixty (60);~~] no size limit.

(i) Rainbow trout and brown trout, singly or in combination: daily limit, eight (8), no more than three (3) of which shall be brown trout;[~~daily and possession limit, eight (8), no more than three (3) of which shall be brown trout;~~] no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish: daily limit; twenty (20); [~~possession limit, forty (40);~~]no size limit.

(2) A person shall release grass carp caught from a lake owned or managed by the department.

(3) A person shall release lake sturgeon.

(4)[~~(3)~~] A person shall release fish:
(a) Below the minimum size limits established by this administrative regulation;
(b) Within a protected slot limit established by this administrative regulation; or
(c) Of a particular species, if a person possesses[~~has in his possession~~] the daily limit for that species established by this administrative regulation.

(5) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while fishing, on the shoreline, or while on the water **except that:**

(a) Fishing tournament organizers and their representatives, excluding the tournament anglers, may have over the daily creel limit of tournament caught fish:
1. At the weigh-in site;
2. At the release site; or
3. When transporting live fish from a remote weigh-in site back to the water body of origin for release.

(b) Fishing tournament organizers and their representatives, excluding the tournament anglers, may have over the daily creel limit of unprocessed tournament caught fish that expired at the sites established in paragraph (a) of this subsection for disposal by one (1) of the following methods:
1. Bagged, sealed, and placed in a garbage dump;
2. Given to a charity for the purposes of human consumption; or
3. Transferred to a conservation officer or to another agent of the department.

(6) Any[~~(4) A person shall not remove any~~] part of the head or tail of a fish with[~~for which there is~~] a size or creel limit shall not be removed while fishing, on the shoreline, or while on the water.[~~until he has completed fishing for the day and has left the water.~~]

(7)[~~(5)~~] A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:
(a) Obtain the fish from a licensed fish propagator or other legal source; and
(b) Retain a receipt or other written proof that the fish were

legally acquired.

(8) All trout shall be released unless a person:[~~(6) A person shall release trout unless he:~~]

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements by KRS 150.170(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches; daily limit, twenty (20).[~~; possession limit, forty (40).~~]

(c) Sauger: size limit, fourteen (14) inches.

(3) Barren River Lake shall extend up:[~~, including:~~]

(a) Barren River to the Highway 100 bridge;

(b) Long Creek to the Highway 100 bridge;

(c) Beaver Creek to the Highway 1297 bridge;

(d) Skaggs Creek to the Mathews Mill Road bridge; and

(e) Peter Creek to the Peter Creek Road bridge:

1. Crappie: size limit, nine (9) inches.

2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1)[~~and the possession limit no more than two (2)~~] fish less than fifteen (15) inches.

(4) Beaver Lake, Anderson County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(5) Bert Combs Lake, Clay County. A person shall not possess shad or use shad for bait.

(6) Beshears Lake, Caldwell County. Channel catfish: size limit, twelve (12) inches.

(7) Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(8) Briggs Lake, Logan County. A person shall not possess shad or use shad for bait.

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Muskellunge: size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches.

(10) Bullock Pen Lake, Grant County. Cannel catfish: size limit, twelve (12) inches.

(11) Carnico Lake, Nicholas County. Largemouth bass:[~~largemouth bass,~~] size limit, fifteen (15) inches.

(12) Carpenter Lake, Daviess County. A person shall not possess shad or use shad for bait.

(13) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(14) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass: no size limit.[~~daily limit, three (3) fish; possession limit six (6) fish; size limit, fifteen (15) inches.~~]

(c) A person shall not possess shad or use shad for bait.

(15) Cave Run Lake.

(a) Largemouth bass: slot limit - a person[~~may keep fish less than thirteen (13) inches or greater than sixteen (16) inches and~~] shall release fish between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches.

(16) Cedar Creek Lake, Lincoln County.

(a) Largemouth bass: size limit, twenty (20) inches; daily limit.[~~limit:~~] one (1).[~~fish; possession limit, two (2) fish.~~]

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(17) Chimney Top Creek,[~~Creek;~~] Wolfe County. Brown trout: size limit, sixteen (16) inches; daily limit, one (1); artificial bait only.

[~~(a) Brown trout: size limit, sixteen (16) inches; daily limit, one (1); possession limit, two (2); artificial bait only.~~]

(18) Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(19) Cumberland Lake shall extend up:

(a) The Cumberland River to Cumberland Falls;

(b) The Big South Fork to Devils Jump;

(c) The Rockcastle River to The Narrows; and

(d) The Laurel River to Laurel River Dam:

1.[~~. (a)~~] Largemouth: size limit, fifteen (15) inches.

2.[~~(b)~~] Smallmouth bass: size limit, eighteen (18) inches.[~~shall be eighteen (18) inches.~~]

3.[~~(c)~~] Striped bass: size limit, twenty-four (24) inches; daily [~~and possession~~]limit, two (2)[~~fish~~].

4.[~~(d)~~] Crappie: size limit, ten (10) inches.

(20) Cumberland River downstream from Barkley Lake Dam. Sauger: size limit, fourteen (14) inches.

(21) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.

(a) Brown trout: size limit [~~(no cull)~~], twenty (20) inches; daily[~~creel~~] limit (no cull), one (1).[~~;~~]

(b) Rainbow trout: slot limit - a person shall release fish between fifteen (15) and twenty (20) inches. Daily limit (no cull), five (5).[~~(no cull), fifteen (15) to twenty (20) inches; creel limit five (5) fish,~~] which shall not include more than one (1) fish greater than twenty (20) inches.[~~; and~~]

(c) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(d) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(22) [~~Cyprus AMAX (currently owned by Addington Enterprises) and Robinson Forest Wildlife Management Areas, Breathitt, Knott, and Perry Counties. On impounded waters of the area:~~

~~(a) Largemouth bass: size limit, fifteen (15) inches; daily limit three (3); possession limit, six (6).~~

~~(b) Sunfish: daily limit, fifteen (15); possession limit, thirty (30).~~

~~(c) Channel catfish: daily and possession limit, four (4).~~

~~(d) A person shall not fish:~~

~~1. Except during daylight hours; or~~

~~2. On Starfire Lake between January 1 and May 31.~~

~~(23)~~] Dale Hollow Lake.

(a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and its hybrids: daily limit, five (5); size limit, sixteen (16) inches.

(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and lake trout:[~~.~~]

1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout.[~~No size limit.~~]

2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.

(e) Largemouth bass: size limit, fifteen (15) inches.[~~;~~]

(f) Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie: size limit, ten (10) inches; daily limit, fifteen (15).

(23)[~~(24)~~] Dewey Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(24)[~~(25)~~] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall not fish except with an artificial bait.

(25)[~~(26)~~] Doe Run Lake, Kenton County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3).[~~; possession limit, six (6).~~]

(b) Channel catfish: daily limit, four (4).[~~; possession limit, eight (8).~~]

(c) A person shall not possess shad or use shad for bait.

(26)[~~(27)~~] Dog Fork, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(27)[~~(28)~~] Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches [~~long~~].

(28)[~~(29)~~] Elmer Davis Lake, Owen County.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(29)[~~(30)~~] Fishtrap Lake. Largemouth bass and[~~or~~] smallmouth bass: size limit, fifteen (15) inches.

(30)[~~(31)~~] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish: daily limit, five (5):[~~fish; possession limit, ten (10) fish;~~] size limit, fifteen (15) inches.

(31)[~~(32)~~] General Butler State Park Lake, Carroll County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3).[~~; possession limit, six (6).~~]

(b) Channel catfish: daily limit, four (4).[~~; possession limit, (8).~~]

(c) A person shall not possess shad or use shad for bait.

(32)[~~(33)~~] Grayson Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(33)[~~(34)~~] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad for bait.

(b) Bluegill and sunfish: daily and possession limit, fifteen (15) fish.

(34)[~~(35)~~] Green River Lake. Crappie: size limit, nine (9) inches.

(35)[~~(36)~~] Guist Creek Lake, Shelby County. Channel catfish: size limit twelve (12) inches.

(36)[~~(37)~~] Jerrico Lake, Henry County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(37)[~~(38)~~] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches; daily limit, twenty (20).[~~; possession limit, forty (40).~~]

(c) Sauger: size limit, fourteen (14) inches.

(38)[~~(39)~~] Kincaid Lake, Pendleton County. Channel catfish: size limit, twelve (12) inches.

(39)[~~(40)~~] Lake Blythe, Christian County. Largemouth bass: slot limit - a person[~~may keep fish less than twelve (12) inches, or greater than fifteen (15) inches, and~~] shall release fish between twelve (12) and fifteen (15) inches.

(40)[~~(41)~~] Lake Malone, Muhlenburg and Logan County.

(a) Largemouth bass: slot limit - a person [~~may keep fish less than twelve (12) inches, or greater than fifteen (15) inches, and~~] shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(41)[~~(42)~~] Lake Mingo, Jessamine County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3)[~~; possession limit, six (6)~~].

(b) Channel catfish: daily limit, four (4).[~~; possession limit, eight (8).~~]

(c) A person shall not possess shad or use shad for bait.

(42)[~~(43)~~] Lake Pollywog, Grant County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3).[~~; possession limit, six (6).~~]

(b) Channel catfish: daily limit, four (4).[~~; possession limit, eight (8).~~]

(c) A person shall not possess shad or use shad for bait.

(43)[~~(44)~~] Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit three (3).

(b) A person shall not possess shad or use shad for bait.

(44)[~~(45)~~] Lake Shelby, Shelby County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3).[~~; possession limit, six (6).~~]

(b) Channel catfish: daily limit, four (4).[~~; possession limit, eight (8).~~]

(c) A person shall not possess shad or use shad for bait.

(45)[~~(46)~~] Laurel River Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit, [~~shall be~~] eighteen (18) inches; daily limit, two (2).[~~; possession limit, four (4).~~]

(c) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).[~~possession limit, thirty (30) fish.~~]

(46)[~~(47)~~] Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(47)[~~(48)~~] Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3).[~~; possession limit, six (6).~~]

(c) Channel catfish: daily limit, four (4).[~~; possession limit, eight (8).~~]

(48)[~~(49)~~] Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); size limit, fifteen (15) inches.

(c) Channel catfish: daily limit, four (4).[~~; possession limit, eight (8).~~]

(d) A person shall not possess shad or use shad for bait.

(49)[~~(50)~~] Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(50)[~~(51)~~] McNeely Lake, Jefferson County. A person shall not possess shad or use shad for bait.

(51)[~~(52)~~] Mill Creek Lake, Powell County.

(a) Largemouth bass:[~~bass,~~] size limit, fifteen (15) inches; daily limit, three (3).[~~; possession limit, six (6) fish.~~]

(b) A person shall not possess shad or use shad for bait.

(52)[~~(53)~~] New Haven Optimist Lake, Nelson County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3).[~~; possession limit, six (6).~~]

(b) Channel catfish: daily limit, four (4).[~~; possession limit, eight (8).~~]

(c) A person shall not possess shad or use shad for bait.

(53)[~~(54)~~] Nolin River Lake shall extend up[~~, whose impoundment extends up~~] Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) [~~and the possession limit two (2)~~]bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(54)[~~(55)~~] Ohio River.

(a) Walleye, sauger, and their hybrids: no size limit; daily limit, ten (10).[~~fish,~~] singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30).[~~;~~] no more than four (4) in the[~~a~~] daily limit shall be fifteen (15) inches or greater.[~~long or longer.~~]

(55)[~~(56)~~] Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout: size limit, sixteen (16) inches; daily limit, one (1) [~~fish~~]; artificial bait only.

(56)[~~(57)~~] Paintsville Lake.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.[~~, twelve (12) to fifteen (15) inches.~~]

(b) Smallmouth bass: size limit, eighteen (18) inches.

(57)[~~(58)~~] Parched Corn Creek, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(58)[~~(59)~~] Pennyrile Lake, Christian County. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.[~~largemouth bass, size limit, twelve (12) to fifteen (15) inch protective slot limit.~~]

(59)[~~(60)~~] Pikeville City Lake, Pike County. Catch and release largemouth bass fishing (no harvest).

(60)[~~(61)~~] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:

(a) Not fish except with an artificial bait with a single hook; and
(b) Release brook trout.
(61)[~~(62)~~] Rough River Lake.
(a) Crappie: size limit, nine (9) inches.
(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) [~~and the possession limit two (2)~~]bass under fifteen (15) inches.
(62)[~~(63)~~] Shanty Hollow Lake, Warren County.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Channel catfish: size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad for bait.
(63)[~~(64)~~] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:
(a) Not fish except with an artificial bait with a single hook; and
(b) Release brook trout.
(64)[~~(65)~~] Sportsman's Lakes, Franklin County.
(a) A person shall not possess shad or use shad for bait.
(b)[~~Upper Sportsman's Lake:~~
~~1.~~] Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3).
(c)[~~; possession limit, six (6); and~~
~~2.~~] Channel catfish: daily limit, four (4).[~~; possession limit, eight (8).~~
~~(c) Lower Sportsman's Lake:~~
~~1. A person thirteen (13) years or older shall not fish; and~~
~~2. Daily limit, three (3) fish of any species.~~]
(65)[~~(66)~~] Spurlington Lake, Taylor County. A person shall not possess shad or use shad for bait.
(66)[~~(67)~~] Sympson Lake, Nelson County. Largemouth bass: size limit, fifteen (15) inches.
(67)[~~(68)~~] Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).[~~; possession limit, thirty (30); size limit, nine (9) inches.~~]
(68)[~~(69)~~] Taylorsville Lake WMA ponds, Spencer County (as designated).
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3).[~~; possession limit, six (6).~~]
(b) Channel catfish: daily limit, four (4).[~~fish; possession limit, eight (8).~~]
(69)[~~(70)~~] Tennessee River downstream from Kentucky Lake Dam. Sauger: size limit, fourteen (14) inches.
(70)[~~(71)~~] Wood Creek Lake. Largemouth and smallmouth bass: size limit, fifteen (15) inches.
(71)[~~(a) Crappie: size limit, nine (9) inches.~~
~~(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches.~~
~~(72)~~] Yatesville Lake: Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a seasonal catch and release for trout season from October 1 - March 31.
(2) A person shall use artificial bait and release trout.
(3) The following streams shall be open to the seasonal catch and release for trout season:
(a) Bark Camp Creek in Whitley County;
(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;
(c) Big Bone Creek within Big Bone Lick State Park in Boone County;
(d) Cane Creek in Laurel County;
(e) Casey Creek in Trigg County;
(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
(g) East Fork Clarks River from Bee Creek upstream to Old Salem Road Bridge in Calloway County;
(h) East Fork of Indian Creek in Menifee County;
(i) Elk Spring Creek in Wayne County;
(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;
(k) Lick Creek in Simpson County;
(l) Middle Fork Red River in Natural Bridge State Park in Powell County;
(m) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and
(n) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.
(4) The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:
(a) Size limits for selected species;
(b) Creel limits for selected species;
(c) Eligible participants; and
(d) Dates and times of special limits.
(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

BENJY KINMAN, Acting Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: September 11, 2008
FILED WITH LRC: September 15, 2008 at 11 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes size limits, daily limits, and possession limits for sport fish that may be taken from Kentucky waters.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations in order to regulate bag, creel, and possession limits of game and fish. KRS 150.470 states that no person shall take or have in possession in any one day more fish than the creel limit prescribed by regulation by the Department of Fish and Wildlife Resources.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 and 150.470 by limiting the number and size of fish that may be taken from Kentucky waters. This will ensure that Kentucky's valuable sport fish populations are maintained at their highest possible levels.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will remove the 9-inch minimum size limit on crappie at Wood Creek Lake. The 15-inch minimum size limit on largemouth bass and 3 fish daily creel limit will also be removed at Carter Caves State Park Lake. The largemouth bass population will now be managed with no minimum size limit and the daily and possession limits will be the statewide limits. Sport fish harvest of lake sturgeon will be prohibited and the boundaries of Lake Cumberland will be clearly identified for anglers. Lastly, possession limits will be clarified for fish species that have daily creel limits.
(b) The necessity of the amendment to this administrative regulation: The removal of the 9-inch size limit on crappie at Wood Creek Lake is necessary because growth rates have decreased and few crappie grow to 9 inches. By removing the size limit, more crappie may be harvested by anglers which should result in increased growth of remaining crappie. The removal of the 15-inch minimum size limit is necessary because growth rates have also

decreased. Harvest of smaller bass will improve growth rates. The prohibited sport fish harvest of lake sturgeon is necessary to re-establish this species in the upper Cumberland River through a stocking program. Clearly defined lake boundaries have been established for Lake Cumberland to facilitate compliance of more restrictive length limits on sport fish in the lake. Lastly, possession limits have been clarified as twice the daily creel limit and where they apply.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All anglers fishing for crappie at Wood Creek Lake, largemouth bass at Carter Caves State Park Lake, and Lake Cumberland will be affected by this amendment. Possession limits for fish have been clarified and all Kentucky anglers fishing throughout Kentucky will potentially be affected by this amendment. In 2006, there were an estimated 721,000 resident and nonresident anglers in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers fishing for crappie at Wood Creek Lake may now harvest any size of crappie, but must follow the statewide daily and possession limits. Anglers fishing for largemouth bass at Carter Caves State Park Lake may now harvest any size of largemouth bass, but must follow the statewide daily and possession limits. Anglers fishing in the upper Cumberland River may not harvest lake sturgeon. Anglers fishing Lake Cumberland within the expanded boundaries will have to comply with sport fishing regulations previously established for this lake. Lastly, possession limits have been clarified for anglers fishing Kentucky and processed fish in a domicile will not be considered within an angler's possession limit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to anglers in complying with this administrative amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers will be able to harvest any size crappie at Wood Creek Lake, which will ultimately result in improved growth rates and potentially larger crappie in future years. In addition, anglers will be able to harvest any size largemouth bass at Carter Caves State Park Lake, which also will ultimately result in improved growth rates and potentially larger largemouth bass in future years. Anglers fishing Lake Cumberland will benefit by clearly being able to determine whether they are fishing the lake proper or the rivers above the lake. The lake sturgeon restoration effort will benefit anglers over time as this fishery will be re-established and, ultimately, anglers may have the potential to catch lake sturgeon in excess of 50-100 pounds.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all anglers fishing in Kentucky were treated equally with these amendments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations necessary to establish fishing guidelines to protect fish from being over harvested. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct revenue will be generated by this administrative regulation for state or local government; however, fishing has an annual economic impact of approximately $1.2 billion in Kentucky.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:001. Definitions for 401 KAR Chapter 10.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 40 C.F.R. **136, EO 2008-507, 2008-531** [~~Part 136~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the [~~Environmental and Public Protection~~] cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. **EO 2008-507 and 2008-531, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.** This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

Section 1. Definitions. (1) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC_{50}, of an effluent or a toxic

substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(2) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for **one (1) hour** [~~a brief period of time~~] without causing an unacceptable harmful effect.

(3) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(4) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC_{50}, by the end of the acute exposure period.

(5) "Adversely affect" or "adversely change" means to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(6) [~~"Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.~~

~~(7) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.~~

~~(8)~~] "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(7) [~~(9)~~] "Best management practices" or "BMPs" means:

(a) **For agriculture operations, as defined by KRS 224.71-100(3); or**

(b) For all other purposes:

1. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2. [~~(b)~~] Include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(8) [~~(10)~~] "Biochemical oxygen demand", "BOD", or "BOD_5" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(9) [~~(11)~~] "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(10) [~~(12)~~] "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms are able to be exposed **for ninety-six (96) hours** [~~indefinitely~~] without causing an unacceptable harmful effect.

(11) [~~(13)~~] "Chronic toxicity" means lethality, reduced growth or reproduction, or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(12) [~~(14)~~] "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(13) [~~(15)~~] "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended, 33 U.S.C. Section 1251 through 1387, otherwise known as the Federal Water Pollution Control Act.

(14) [~~(16)~~] "Coal remining operation" means:

(a) A surface coal mining operation, which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977; and

(b) A surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20, for a site on which a coal mining operation was conducted before August 3, 1977.

(15) [~~(17)~~] "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that are able to support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(16) [~~(18)~~] "Concentrated animal feeding operation" **means one (1) of the following:**

(a) "Large concentrated animal feeding operation" as defined in subsection (45) of this section;

(b) "Medium concentrated animal feeding operation" as defined in subsection (5) of this section; or

(c) "Small concentrated animal feeding operation" as defined in subsection (76) of this section.

(17) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and disinfection [~~is defined by 401 KAR 5:002, Section 1(37)~~].

(18) [~~(19)~~] "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(19) [~~(20) "Conventional treatment" means or includes coagulation, sedimentation, filtration, and disinfection.~~

~~(21)~~] "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents **that** [~~which~~] represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(20) [~~(22)~~] "Day" means a twenty-four (24) hour period.

(21) [~~(23)~~] "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

(22) [~~(24)~~] "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, **Energy and Environment** [~~Environmental and Public Protection~~] Cabinet.

(23) [~~(25)~~] "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(24) [~~(26)~~] "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(25) [~~(27)~~] "Domestic water supply" or "DWS" means surface waters that with conventional **domestic water supply** treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in a food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 U.S.C. 300f - 300j-26.

(26) [~~(28)~~] "Effluent limitations" is defined at KRS 224.01-010(12).

(27) [~~(29)~~] "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(28) [~~(30)~~] "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

(29) [~~(31)~~] "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

(30) [~~(32)~~] "Eutrophication" means the enrichment of a surface water by the discharge or addition of a nutrient.

(31) [~~(33)~~] "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030.

(32) [~~(34)~~] "Existing use" means a legitimate use being attained in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.

(33) [~~(35)~~] "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

(34) [~~(36)~~] "°F" means degrees Fahrenheit.

(35) [~~(37)~~] "General permit" means a KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(36) [~~(38)~~] "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(37) [~~(39)~~] "High quality water" means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 10:030.

(38) [~~(40)~~] "Impact" means a change in the chemical, physical, or biological quality or condition of a surface water.

(39) [~~(41)~~] "Impairment" means a detrimental impact to a surface water that prevents attainment of a designated use.

(40) [~~(42)~~] "Indigenous aquatic community" means naturally occurring aquatic organisms including bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

(41) [~~(43)~~] "Inhibition concentration of twenty-five (25) percent" or "IC_{25}" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which an unacceptable chronic effect is not observed.

(42) [~~(44)~~] "Intermittent water" means a stream that flows only at certain times of the year.

(43) [~~(45)~~] "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(44) [~~(46)~~] "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(45) "Large concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(4), effective July 1, 2007.

(46) [~~(47)~~] "LC_1" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(47) [~~(48)~~] "LC_{50}" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(48) [~~(49)~~] "Maintain" means to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

(49) [~~(50)~~] "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(50) "Medium concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(6), effective July 1, 2007.

(51) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(52) "mgd" or "MGD" means million gallons per day.

(53) "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(54) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(55) [~~"Modified Warm Weather Aquatic Habitat" means water that has been found to be incapable of supporting and maintaining a balanced, integrated, adaptive community of warm water organisms because of largely irretrievable man-induced changes in the watershed or to the physical habitat of the stream itself.~~

~~(56)~~] "Natural temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(56) [~~(57)~~] "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(57) [~~(58)~~] "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(58) [~~(59)~~] "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(59) [~~(60)~~] "Nonpoint" means any source of pollutants not defined by a point source.

(60) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that may cause or contribute to the pollution of any waters of the Commonwealth.

(61) "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 10:030.

(62) "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031.

(63) "pCi/l" means picocuries per liter.

(64) "PCR" means primary contact recreation.

(65) "Point source" **is defined by 33 U.S.C. 1362(14)** [~~means a discernible, confined, and discrete conveyance from which pollutants are or may be discharged~~]. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(66) "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(67) [~~"Preexisting discharge" means a discharge that is occurring when applying for a KPDES permit under 401 KAR 5:040 or 401 KAR 10:029.~~

~~(68)~~] "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(68) [~~(69)~~] "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(69) [~~(70)~~] "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(70) [~~(71)~~] "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Section 201, 205, and 208 of the Clean Water Act**, 33 U.S.C. 1251-1387,** to control point sources of pollution within a planning area.

(71) [~~(72)~~] "Remined area" means only that area of a coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(72) [~~(73)~~] "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(73) [~~(74)~~] "SCR" means secondary contact recreation.

(74) [~~(75)~~] "Secondary contact recreation waters" means those waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(75) [~~(76)~~] "Seven-Q-ten" or "$7Q_{10}$" means that minimum aver-

age flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(76) "Small concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(9), effective July 1, 2007.

(77) "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(78) "Standard" means a water quality standard.

(79) "Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

(80) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. [~~Effluent ditches and~~] Lagoons used for waste treatment **and effluent ditches** that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(81) "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(82) "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(83) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation.

(84) "U.S. EPA" means the United States Environmental Protection Agency.

(85) "Warm water aquatic habitat" or "WAH" means a surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(86) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(87) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 12, 2008 at noon

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(b) The necessity of this administrative regulation: This administrative regulation defines the terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

(d)How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide definitions for terms used throughout the chapter so that the other administrative regulations in the chapter may be properly interpreted and enforced.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments correct grammar errors, reflect the new cabinet name, and comply with KRS 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to clarify the meanings of terms used throughout the chapter.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. These amendments will add in the understanding of the water quality standards regulations contained in 401 KAR chapter 10.

(d) How the amendment will assist in the effective administration of the statutes: The amendments were necessary to clarify the meanings of terms used throughout the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will be able to understand the terms used throughout 401 KAR Chapter 10.

(5)Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no initial costs as a result of creating this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of creating this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Government entities using these regulations will be able to find definitions for terms used throughout the chapter.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There will be no cost.

(d) How much will it cost to administer this program for subsequent years? There will be no cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:026. Designation of uses of surface waters.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100 - 224.73-120**, EO 2008-507, 2008-531**

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287 [~~et seq.~~], 1531-1544 [~~et seq.~~], 33 U.S.C. 1311, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031[~~5:002, 5:029, 5:030, and 5:031~~] establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. **EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.** This administrative regulation applies the designated uses described in 401 KAR 10:031[~~5:031~~] to the surface waters of the Commonwealth. This administrative regulation also makes all surface waters subject to the general criteria specified in 401 KAR 10:031[~~5:031~~], Section 2. [~~Definitions for terms used in this administrative regulation are found in 401 KAR 5:002.~~]

Section 1. Scope of Designation. (1) Surface waters listed in this administrative regulation shall be designated for all legitimate uses contained in KRS 224.70-100(1) except as specified in 401 KAR 10:031[~~5:031~~], Sections 5 and 8, or until redesignated in accordance with the procedures of this administrative regulation.

(2) Designated uses are:

(a) Warm water aquatic habitat;

(b) Cold water aquatic habitat;

(c) Primary contact recreation;

(d) Secondary contact recreation;

(e) Domestic water supply; **and** [~~and~~]

(f) Outstanding state resource water.[~~; and~~

~~(g) Modified warm water aquatic habitat.~~]

(3) Listed waters shall meet all criteria applicable to their designated uses and those criteria listed in 401 KAR 10:031[~~5:031~~], Section 2, unless the cabinet grants an exception pursuant to 401 KAR 10:031[~~5:031~~], Section 10 or 11.

(4) Outstanding state resource waters may have unique water quality characteristics that shall be protected by additional criteria established in 401 KAR 10:031[~~5:031~~], Section 8.

Section 2. Redesignation of Surface Water Uses. (1)(a) Surface waters may be redesignated only upon affirmative findings by the cabinet pursuant to Sections 3 and 4 of this administrative regulation.

(b) Before redesignating a surface water, the cabinet shall provide notice and an opportunity for a public hearing.

(2) In redesignating a surface water, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A designated use shall not be removed for a surface water if that use is an existing use, or if the use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, and by implementing cost-effective [~~and reasonable~~] best management practices for nonpoint source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate the surface water upon demonstration that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use;

(b) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges;

(c) Human caused conditions or sources of pollution [~~that~~] prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(d) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate **the** [~~such~~] modification in a way that would result in the attainment of the use;

(e) Physical conditions related to the natural features of the surface water, but unrelated to water quality, preclude attainment of the aquatic life use, such as the lack of a proper substrate, cover, flow, depth, pools, or riffles[~~, and the like, unrelated to water quality, preclude attainment of the aquatic life use~~]; or

(f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, would result in substantial and widespread economic and social impact as determined by the guidelines in [“]Interim Economic Guidance for Water Quality Standards Workbook[”], EPA, March 1995 [~~incorporated by reference in Section 6 of this administrative regulation~~].

(5) Redesignations shall be consistent with the antidegradation provisions of 401 KAR 10:029 and 10:030[~~5:029 and 401 KAR 5:030~~].

Section 3. Documentation for Redesignations. (1)(a) A person may request redesignation of surface water uses by petition to the cabinet.

(b) The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2)(a) The cabinet may propose redesignations of surface water uses.

(b) The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Documentation to support the redesignation of a surface water of the Commonwealth shall be:

(a) A United States Geological Survey 7.5 minute topographic map or its equivalent [~~approved by the cabinet~~] showing those surface waters to be redesignated, with a description consisting of a river mile index with existing and proposed discharge points;

(b) Existing uses and water quality data for the surface waters for which the redesignation is proposed. If adequate data are unavailable, additional studies shall[~~may~~] be required by the cabinet;

(c) Descriptions of general land uses and specific land uses adjacent to the surface waters for which the redesignation is proposed;

(d) The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) General physical characteristics of the surface water including width, depth, bottom composition, and slope;

(f) The frequency of occasions when there is no natural flow in

the surface water and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

(g) An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters.

1. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed.

2. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota shall be documented;

(h) The proposed designated uses for the surface water in question; and

(i) An explanation of the irretrievable person-induced, or natural conditions that[~~which~~] preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the sources.

Section 4. Procedures for Redesignation. (1) For each of the surface waters for which a redesignation is proposed, the cabinet or petitioner shall prepare a fact sheet containing the following information:

(a) The name and address of the petitioner;

(b) The name and sketch or description of the surface water proposed for specified use redesignations, including the location of existing and proposed dischargers;

(c) The proposed use redesignations;

(d) A brief abstract of the supportive documentation, which demonstrates that the redesignation is appropriate;

(e) The appropriate water quality criteria for the surface water based on the proposed designated use;

(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use; and

(g) A "plain English" summary of the implications of the designation for the community and other users or potential users of the surface water in question.

(2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

Section 5. Surface Water Use Designations. (1) Listed in the tables below are the use designations for specific surface waters of the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water is located. The identifying symbols for use designations are listed in table A of this section.[~~:~~]

Table A: Use Designation Symbols	
WAH	Warm Water Aquatic Habitat
CAH	Cold Water Aquatic Habitat
PCR	Primary Contact Recreation
SCR	Secondary Contact Recreation
DWS	Domestic Water Supply, applicable at existing points of public water supply intake[~~withdrawal~~]
OSRW	Outstanding State Resource Water
[~~MWAH~~]	[~~Modified Warm Water Aquatic Habitat~~]

(2)(a) Surface waters not specifically listed in this section are designated for the **uses** [~~use~~] of warm water aquatic habitat, primary contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this administrative regulation.

(b) [~~Waters where~~] Domestic water supply criteria in 401 KAR 10:031, Section 6, are implemented **at locations listed** [~~are found~~] in Table B in this paragraph.

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Name	Description	County
BIG SANDY RIVER BASIN		
Elkhorn City Water Department	Mile 13.7 of Russell Fork	Pike
Paintsville Utilities Commission	Mile 38.9 of Levisa Fork	Johnson
Louisa Municipal Water Works	Mile 0.6 of Levisa Fork	Lawrence
Prestonsburg City Utilities Commission	Mile 57.5 of Levisa Fork	Floyd
Pikeville Water Works/US Filter	Mile 88.2 of Levisa Fork	Pike
Martin County Water District #1	Mile 23.8 of Tug Fork	Martin
US Filter/Southern Water & Sewer District	Mile 65.4 of Levisa Fork	Floyd
Jenkins Water Works	Mile 0.2 of Little Elkhorn Creek (Elkhorn Lake)	Letcher
Mountain Water District	Mile 4.6 of Russell Fork	Pike
Martin County Water District #1	Mile 23.8 of Tug Fork	Martin
Jenkins Water Works	Mile 24.1 of Elkhorn Creek	Letcher
Little Sandy River Basin		
Grayson Utility Commission	Mile 40.1 of Little Sandy River	Carter
Greenup Water Plant	Mile 0.7 of Little Sandy River	Greenup
Tygarts Creek Basin		
Olive Hill Water Works	Mile 2.2 of Perry Branch (Olive Hill Reservoir)	Carter
Olive Hill Water Works	Mile 81.1 of Tygarts Creek	Carter
Upper Cumberland River Basin		
Water Service Corporation of KY	Mile 3.2 of Little Yellow Creek (Fern Lake)	Bell
Somerset Water Service	Mile 513.6 of Cumberland River (Lake Cumberland)	Pulaski
Corbin City Utilities Commission	Mile 17.3 of Laurel River (City Reservoir)	Laurel
Burnside Water Company	Mile 517.6 of Cumberland River (Lake Cumberland)	Pulaski
Albany Municipal Water Works Plant A	Mile 7.0 of Indian Creek (Lake Cumberland)	Clinton
Monticello Water & Sewer Commission	Mile 502.2 of Cumberland River (Lake Cumberland)	Wayne
London Utility Commission	Mile 1.2 of Indian Camp Creek (Laurel River Reservoir)	Laurel
Harlan Municipal Water Works	Mile 0.2 of Poor Fork	Harlan
Mt Vernon Municipal Water Works	Mile 3.3 of Renfro Creek (Lake Linville)	Rockcastle
Laurel County Water Department #2	Mile 23.9 of Laurel River (Dorthea Dam)	Laurel
McCreary County Water District Plant A	Mile 8.9 of Laurel Creek (Laurel Creek Reservoir)	McCreary
Burkesville Municipal Water Works	Mile 427.05 of Cumberland River	Cumberland
Mckee Municipal Water Works	Mile 2.3 of Bills Branch (Mckee City Reservoir)	Jackson

Williamsburg Water Works	Mile 584.15 of Cumberland River	Whitley
Jamestown Municipal Water Works	Mile 3.9 of Greasy Creek Branch (Lake Cumberland)	Russell
Jackson County Water Association Inc	Mile 2.1 of Flat Lick Creek (Beulah [Tyner] Lake)	Jackson
Knox County Utility Commission	Mile 642.61 of Cumberland River	Knox
Wood Creek Water District	Mile 7.2 of Wood Creek (Wood Creek Lake)	Laurel
Cumberland Water Works	Mile 25.2 of Poor Fork	Harlan
Pineville Water System	Mile 3.2 of Cannon Creek (Cannon Creek Lake)	Bell
Benham Water Works	Mile 3.5 of Looney Creek	Harlan
Woodson Bend Resort	Mile 2.98 of South Fk. Cumberland River (Lake Cumberland)	Pulaski
Barbourville Utility Commission	Mile 1.3 of Indian Camp Creek (Laurel River Lake)	Laurel
Cawood Water District	Mile 11.0 of Martins Fork	Harlan
Cumberland County Water District	Mile 419.7 of Cumberland River	Cumberland
Ky Parks Cumberland Falls	Mile 562.5 of Cumberland River	Whitley
Barbourville Utility Commission	Mile 635.5 of Cumberland River	Knox
Albany Municipal Water Works Plant B	Mile 6.7 of Indian Creek (Lake Cumberland)	Clinton
McCreary County Water District Plant B	Mile 31.0 of South Fork Cumberland River (Lake Cumberland)	McCreary
Evarts Municipal Water Works	Mile 0.1 on UT of Bailey Creek. UT at mile 0.6	Harlan
Evarts Municipal Water Works	Mile 1.0 of Bailey Creek	Harlan
Bell County Forestry Camp	Mile 0.2 of Bear Creek (Chenoa Lake)	Bell
Licking River Basin		
Millersburg Municipal Water Works	Mile 13.3 of Hinkston Creek	Bourbon
Paris Municipal Water Works	Mile 16.7 of Stoner Creek	Bourbon
Northern Ky Water Service District Plant A	Mile 4.8 of Licking River	Kenton
Mt Sterling Water & Sewer System	Mile 36.1 of Slate Creek at mile 36.1 (Reservoir)	Montgomery
Cynthiana Municipal Water Works	Mile 51.2 of South Fork Licking River	Harrison
Flemingsburg Utilities	Mile 0.7 of UT to Town Branch (Flemingsburg Lake)	Fleming
Williamstown Municipal Water	Mile 1.89 of Lake Branch (Lake Williamstown)	Grant
Morehead State University Water Plant	Mile 0.2 of Evans Branch (Evans Branch Impoundment)	Rowan
Morehead State University Water Plant	Mile 13.7 of Tripletts Creek	Rowan
Carlisle Municipal Water Plant	Mile 3.5 of UT to Brushy Fork (City Lake)	Nicholas
Falmouth Water Plant	Mile 52.7 of Licking River	Pendleton
Morehead Utility Plant Board	Mile 177.7 of Licking River	Rowan
West Liberty Water Company	Mile 228.6 of Licking River	Morgan
Western Fleming Water District	Mile 102.5 of Licking River	Nicholas
Salyersville Municipal Water Works	Mile 273.2 of Licking River	Magoffin
Cynthiana Municipal Water Works	Mile 84.5 of Licking River	Harrison
Flemingsburg Utilities	UT of Town Branch at mile 1.6 (Old Reservoir)	Fleming
Flemingsburg Utilities	Mile 131.8 of Licking River	Fleming
Carlisle Municipal Water Department	Mile 110.2 Licking River	Nicholas
West Liberty Water Company	Mile 3.9 of North Fork Licking River (Cave Run Lake)	Rowan
Cave Run Water Commission	Mile 197.4 of Licking River (Cave Run Lake)	Menifee
Rattlesnake Ridge Water District	Mile 57.4 of Little Sandy River (Grayson Lake)	Elliott
Kentucky River Basin		
Lancaster Municipal Water Works	Mile 145.2 of Kentucky River (Pool #8)	Garrard
Northpoint Training Center	Mile 17.3 of Dix River (Herrington Lake)	Boyle
Frankfort Electric & Water Plant Board	Mile 71.7 of Kentucky River (Pool #4)	Franklin
Hazard Water Department	Mile 104.1 of North Fork Kentucky River	Perry
Wilmore Utilities System	Mile 117.2 of Kentucky River (Pool #6)	Jessamine
Nicholasville Water Works	Mile 157.9 of Kentucky River (Pool #8)	Jessamine
Berea Municipal Utilities	Mile 3.6 of Cowbell Creek Cowbell Lake	Madison
Jackson Municipal Water Works	Mile 47.2 of North Fork Kentucky River	Breathitt
Kentucky American Water Company Plant A	Mile 171.5 of Kentucky River (Pool #9)	Fayette
Kentucky American Water Company Plant B	Mile 10.6 of East Hickman Creek (Reservoir #4)	Fayette
Kentucky American Water Company	Reservoir #1 (Lake Ellerslie)	Fayette
Danville Water Works	Mile 18.9 of Dix River (Herrington Lake)	Boyle

Lawrenceburg Municipal Water Works	Mile 86.2 of Kentucky River	Anderson
Versailles Municipal Water Works	Mile 87.7 of Kentucky River (Pool 5)	Woodford
Harrodsburg Municipal Water Works	Mile 121.0 of Kentucky River (Pool 7)	Mercer
Stanford Water Works	Mile 6.0 of Neals Creek.(Rice Lake [Stanford City Reservoir])	Lincoln
Richmond Utilities Board	Mile 206.49 of Kentucky River (Pool 11)	Madison
Whitesburg Municipal Water Works/Veolia Water	Mile 150.9of North Fork Kentucky River	Letcher
Manchester Water Works	Mile 3.9 of Beech Creek (Bert Combs Lake)	Clay
Georgetown Municipal Water & Sewer	Mile 33.5 of North Elkhorn Creek	Scott
Beattyville Water Works	Mile 1.3 of North Fork Kentucky River (Pool #14)	Lee
Bullock Pen Water District	Mile 2.8 Of Bullock Pen Creek (Bullock Pen Lake)	Grant
Ky Parks Natural Bridge State Park	Mile 0.11 of Mill Creek (Mill Creek Lake)	Powell
Winchester Municipal Utilities	Mile 6.5 of Lower Howard Creek (Winchester Reservoir {Carol E. Ecton Reservoir})	Clark
Winchester Municipal Utilities	Mile 1180.8 of Kentucky River (Pool #10)	Clark
Campton Water Works	Mile 0.3 of Hiram Branch (Campton Lake)	Wolfe
Hyden-Leslie County Water District	Mile 75.4 of Middle Fork Kentucky River (Buckhorn Reservoir)	Leslie
Booneville Water & Sewer District	Mile 12.8 of South Fork Kentucky River	Owsley
Georgetown Municipal Water & Sewer	Mile 0.61 of UT (Royal Springs) at mile 33.5 of North Elkhorn Creek	Scott
Owenton Water Works	Mile 0.6 of Severn Creek	Owen
Owenton Water Works	Mile 1.1 of UT to North Severn Creek at mile 5.5 (Lower Thomas Lake)	Owen
Irvine Municipal Utilities	Mile 223.4 of Kentucky River (Pool #11)	Estill
Bluegrass Army Depot	Mile 0.4 of Little Muddy Creek (Lake Vega)	Madison
Beech Fork Water Commission	Mile 0.3 of Beech Fork (Beech Fork Reservoir)	Powell
Berea Municipal Utilities	Mile 2.1 of East Fork Silver Creek (Lower Silver Creek Lake)	Madison
Berea Municipal Utilities	Mile 2.8 of East Fork Silver Creek (Upper Silver Creek Lake [Kales Lake])	Madison
Berea Municipal Utilities	Mile 2.5 of Owsley Fork (Owsley Fork Lake)	Madison
Manchester Water Works	Mile 18.9 of Goose Creek	Clay
Blackey Municipal Water Works	Mile 131.0 of North Fork Kentucky River	Letcher
Beech Fork Water Commission	Mile 31.0 of Red River	Powell
Salt River Basin		
Shelbyville Municipal Water & Sewer Commission	Mile 28.0 of Guist Creek (Guist Creek Lake)	Shelby
Bardstown Municipal Water Works	Mile 1.1 of Buffalo Creek (Lake Sympson)	Nelson
Lebanon Water Works Company	Mile 98.2 of Rolling Fork River	Marion
Springfield Water Works	Mile 4.2 of Long Lick Creek (Willisburg Lake)	Washington
Lebanon Water Works Company	Mile 1.0 of Fagan Branch (Fagan Branch Reservoir)	Marion
Springfield Water Works	Mile 1.3 of Allen Branch (Springfield Reservoir)	Washington
Green River Basin		
Hidden Valley Springs	Mile 0.4 of Hidden Valley Spring of UT to Rock Creek at mile 5.9	Grayson
Morgantown Utilities Commission	Mile 144.8 of Green River	Butler
Campbellsville Water Works	Mile 1.3 of Trace Fork (City Reservoir)	Taylor
Columbia Utilities Commission	Mile 42.7 of Russell Creek	Adair
Glasgow Water Co/Plant B	Mile 22.4 of Beaver Creek	Barren
Greensburg Municipal Water Works	Mile 283.5 of Green River	Green
Livermore Water Works	Mile 71.9 of Green River	McLean
Elizabethtown Municipal Water Works A	From Old City Spring at mile 10.6 of Valley Creek	Hardin
Elizabethtown Municipal Water Works A	Gaithers Station Spring at mile 6.9 of Valley Creek	Hardin
Bowling Green Municipal Utilities	Mile 38.1 of Barren River	Warren
Green River Valley Water District	Rio Springs at UT to Green River at mile 240.6	Hart
Hodgenville Water Works	Mile 5.8 of North Fork Nolin River	Larue
Hardinsburg/Us Filter	Tules Creek at mile 1.2 (Rough River Reservoir)	Breckinridge
Central City Municipal Water & Sewer	Mile 86.0 of Green River	Muhlenberg
Calhoun Water Works	Mile 63.9 of Green River	cLean
Hartford Municipal	Mile 29.8 of Rough	Ohio

Water Works	River	
Greenville Utilities Commission	Luzerne Lake (Luzerne Lake no longer connected to Caney Creek at mile 2.3	Muhlenberg
Ohio County Water Plant	Mile 131.9 of Green River	Ohio
Franklin Water Plant	Mile 23.4 of West Fork Drake's Creek	Simpson
Glasgow Water Co/Plant A	Mile 86.8 of Barren River (Barren River Reservoir)	Barren
Leitchfield Municipal Water Works	Mile 107.7 of Rough River (Reservoir)	Grayson
Campbellsville Water Works	Mile 5.3 of Robinson Creek (Green River Reservoir)	Taylor
Edmonson County Water District	Mile 183.7 of Green River	Edmonson
Elizabethtown Municipal Water Works B	Mile 2.1 of Freeman Creek (Freeman Lake)	Hardin
Tompkinsville Municipal Water Works	Mile 6.0 of Mill Creek (Mill Creek Reservoir)	Monroe
Madisonville Municipal Water Works	Mile 54.1 of Green River	Hopkins
Liberty Water Works	Mile 0.9 of Hickman Creek (Lake Liberty)	Casey
City of Lafayette (Tennessee)	Mile 118.4 of Barren River	Monroe
Stanford Water Works	Mile 0.6 of UT to Green River (James C. Harris Reservoir)	Lincoln
Hardin County Water District #2	Nolin River at mile 75.3 (White Mills Spring)	Hardin
Green River Valley Water District	Mile 240.6 of Green River	Hart
Scottsville Municipal Water Works	Mile 88.6 of Barren River (Barren River Lake)	Allen
Butler County Water System	Mile 143.8 of Green River	Butler
Edmonson County Water District	Mile 23.5 of Nolin River (Nolin Reservoir)	Grayson
Columbia Utilities Commission	Mile 317.5 of Green River (Green River Reservoir)	Adair
Henderson Water Utilities/South	Mile 41.3 of Green River	Webster
Webster Cnty Water District	Mile 47.5 of Green River	Webster
Hodgenville Water Works	Mile 0.3 of UT at mile 8.1 of North Fork Nolin River (Salem Lake)	Larue
Grayson County Water District	Mile 97.7 of Rough River (Rough River Reservoir)	Grayson
Lower Cumberland River Basin		
Kentucky State Penitentiary	Mile 40.2 of Cumberland River (Lake Barkley)	Lyon
Hopkinsville Water Environmental Authority	Mile 14.2 of North Fork Little River	Christian
Hopkinsville Water Environmental Authority	Mile 11.9 of Little River (Lake Barkley)	Trigg
Eddyville Municipal Water Works	Mile 1.5 of Knob Creek (Lake Barkley)	Lyon
Princeton Water Department	Mile 41.9 of Cumberland River (Lake Barkley)	Lyon
Kuttawa Municipal Water Plant	Mile 37.9 of Cumberland River (Lake Barkley)	Lyon
Barkley Lake Water District	Mile 0.7 of Hopson Creek (Lake Barkley)	Trigg
Crittenden-Livingston Co Water District	Mile 14.0 of Cumberland River	Livingston
Hopkinsville Water Environmental Authority	From Hopkinsville Stone Quarry No. 1 (South Quarry) adjacent to North Fork Little River at mile 14.8	Christian
Cadiz Water Company	Mile 13.5 of Little River	Trigg
Hopkinsville Water Environmental Authority	Hopkinsville Stone Quarry No. 2 (North Quarry) adjacent to White Creek at mile 0.2	Christian
TVA-Land Between The Lakes, Wrangler	Mile 1.0 on UT of Lick Creek at mile1.1	Trigg
Eddyville Municipal Water Works	Mile 40.2 of Cumberland River (Lake Barkley)	Lyon
Tradewater River Basin		
Providence Water Works	Mile 0.3 of Owens Creek (New Providence City Lake)	Webster
Madisonville Municipal Water Works	Mile 6.3 of Greasy Creek (Lake Pewee).	Hopkins
Earlington Water Works	Mile 0.2 of UT to Clear Creek at mile 26.5 (Loch Mary Reservoir)	Hopkins
Dawson Springs City Water & Sewer	Mile 0.1 of Piney Creek (Lake Beshear)	Caldwell
Providence Municipal Water Works	Mile 41.3 of Tradwater River	Webster
Ohio River Basin (Main Stem And Minor Tributaries [Note: river miles follow the USGS convention of starting mileage beginning at Pittsburgh, PA and ending at river mouth])		
Maysville Utility Commission	Mile 408.5 of Ohio River	Mason
Ashland Municipal Water Works	Mile 319.68 of Ohio River	Boyd
Northern Ky Water Service District - Newport Plant	Mile 463.6 of Ohio River	Campbell
Paducah Water Works	Mile 935.6 of Ohio River	McCracken
Louisville Water Company /ZPS A	Mile 600.6 of Ohio River	Jefferson
Henderson Water & Sewer Department	Mile 803.6 of Ohio River	Henderson
Northern Ky Water Service District Plant B	Mile 462.7 of Ohio River	Campbell
Morganfield Municipal	Mile 840.0 of Ohio	Union

pal Water Works	River	
Russell Water Plant	Mile 327.7 of Ohio River	Greenup
Marion Municipal Water Works	Mile 26.4 of Crooked Creek (City Lake)	Crittenden
US Army Ft Knox A	Mile 8.6 of Otter Creek	Meade
Louisville Water Company BEPWTP B	Mile 594.7 of Ohio River	Jefferson
Sturgis Municipal Water Works	Mile 871.4 of Ohio River	Union

[~~Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~

~~Name~~	~~Description~~	~~County~~
~~BIG SANDY RIVER BASIN~~		
~~Elkhorn City Water Department~~	~~Mile 13.7 of Russell Fork~~	~~Pike~~
~~Paintsville Utilities Commission~~	~~Mile 38.9 of Levisa Fork~~	~~Johnson~~
~~Louisa Municipal Water Works~~	~~Mile 0.6 of Levisa Fork~~	~~Lawrence~~
~~Prestonsburg City Utilities Commission~~	~~Mile 57.5 of Levisa Fork~~	~~Floyd~~
~~Pikeville Water Works/US Filter~~	~~Mile 88.2 of Levisa Fork~~	~~Pike~~
~~Martin County Water District #1~~	~~Mile 23.8 of Tug Fork~~	~~Martin~~
~~US Filter/Southern Water & Sewer District~~	~~Mile 65.4 of Levisa Fork~~	~~Floyd~~
~~Jenkins Water Works~~	~~Mile 0.2 of Little Elkhorn Creek (Elkhorn Lake)~~	~~Letcher~~
~~Mountain Water District~~	~~Mile 4.6 of Russell Fork~~	~~Pike~~
~~Martin County Water District #1~~	~~Mile 23.8 of Tug Fork~~	~~Martin~~
~~Jenkins Water Works~~	~~Mile 24.1 of Elkhorn Creek~~	~~Letcher~~
~~Little Sandy River Basin~~		
~~Grayson Utility Commission~~	~~Mile 40.1 of Little Sandy River~~	~~Carter~~
~~Greenup Water Plant~~	~~Mile 0.7 of Little Sandy River~~	~~Greenup~~
~~Tygarts Creek Basin~~		
~~Olive Hill Water Works~~	~~Mile 2.2 of Perry Branch (Olive Hill Reservoir)~~	~~Carter~~
~~Olive Hill Water Works~~	~~Mile 81.1 of Tygarts Creek~~	~~Carter~~

[~~Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~

~~Upper Cumberland River Basin~~		
~~Water Service Corporation of KY~~	~~Mile 3.2 of Little Yellow Creek (Fern Lake)~~	~~Bell~~
~~Somerset Water Service~~	~~Mile 513.6 of Cumberland River (Lake Cumberland)~~	~~Pulaski~~
~~Corbin City Utilities Commission~~	~~Mile 17.3 of Laurel River (City Reservoir)~~	~~Laurel~~
~~Burnside Water Company~~	~~Mile 517.6 of Cumberland River (Lake Cumberland)~~	~~Pulaski~~
~~Albany Municipal Water Works Plant A~~	~~Mile 7.0 of Indian Creek (Lake Cumberland)~~	~~Clinton~~
~~Monticello Water & Sewer Commission~~	~~Mile 502.2 of Cumberland River (Lake Cumberland)~~	~~Wayne~~
~~London Utility Commission~~	~~Mile 1.2 of Indian Camp Creek (Laurel River Reservoir)~~	~~Laurel~~
~~Harlan Municipal Water Works~~	~~Mile 0.2 of Poor Fork~~	~~Harlan~~
~~Mt Vernon Municipal Water Works~~	~~Mile 3.3 of Renfro Creek (Lake Linville)~~	~~Rockcastle~~
~~Laurel County Water Department #2~~	~~Mile 23.9 of Laurel River (Dorthea Dam)~~	~~Laurel~~
~~McCreary County Water District Plant A~~	~~Mile 8.9 of Laurel Creek (Laurel Creek Reservoir)~~	~~McCreary~~
~~Burkesville Municipal Water Works~~	~~Mile 427.05 of Cumberland River~~	~~Cumberland~~
~~Mckee Municipal Water Works~~	~~Mile 2.3 of Bills Branch (Mckee City Reservoir)~~	~~Jackson~~
~~Williamsburg Water Works~~	~~Mile 584.15 of Cumberland River~~	~~Whitley~~
~~Jamestown Municipal Water Works~~	~~Mile 3.9 of Greasy Creek Branch (Lake Cumberland)~~	~~Russell~~
~~Jackson County Water Association Inc~~	~~Mile 2.1 of Flat Lick Creek (Beulah [Tyner] Lake)~~	~~Jackson~~
~~Knox County Utility Commission~~	~~Mile 642.61 of Cumberland River~~	~~Knox~~
~~Wood Creek Water District~~	~~Mile 7.2 of Wood Creek (Wood Creek Lake)~~	~~Laurel~~
~~Cumberland Water Works~~	~~Mile 25.2 of Poor Fork~~	~~Harlan~~
~~Pineville Water System~~	~~Mile 3.2 of Cannon Creek (Cannon Creek Lake)~~	~~Bell~~
~~Benham Water Works~~	~~Mile 3.5 of Looney Creek~~	~~Harlan~~
~~Woodson Bend Resort~~	~~Mile 2.98 of South Fk. Cumberland River (Lake Cumberland)~~	~~Pulaski~~
~~Barbourville Utility Commission~~	~~Mile 1.3 of Indian Camp Creek (Laurel~~	~~Laurel~~

~~[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~		
	~~River Lake)~~	
~~Cawood Water District~~	~~Mile 11.0 of Martins Fork~~	~~Harlan~~
~~Cumberland County Water District~~	~~Mile 419.7 of Cumberland River~~	~~Cumberland~~
~~Ky Parks Cumberland Falls~~	~~Mile 562.5 of Cumberland River~~	~~Whitley~~
~~Barbourville Utility Commission~~	~~Mile 635.5 of Cumberland River~~	~~Knox~~
~~Albany Municipal Water Works Plant B~~	~~Mile 6.7 of Indian Creek (Lake Cumberland)~~	~~Clinton~~
~~McCreary County Water District Plant B~~	~~Mile 31.0 of South Fork Cumberland River (Lake Cumberland)~~	~~McCreary~~
~~Evarts Municipal Water Works~~	~~Mile 0.1 on UT of Bailey Creek, UT at mile 0.6~~	~~Harlan~~
~~Evarts Municipal Water Works~~	~~Mile 1.0 of Bailey Creek~~	~~Harlan~~
~~Bell County Forestry Camp~~	~~Mile 0.2 of Bear Creek (Chenoa Lake)~~	~~Bell~~
~~Licking River Basin~~		
~~Millersburg Municipal Water Works~~	~~Mile 13.3 of Hinkston Creek~~	~~Bourbon~~
~~Paris Municipal Water Works~~	~~Mile 16.7 of Stoner Creek~~	~~Bourbon~~
~~Northern Ky Water Service District Plant A~~	~~Mile 4.8 of Licking River~~	~~Kenton~~
~~Mt Sterling Water & Sewer System~~	~~Mile 36.1 ofSlate Creek at mile 36.1 (Reservoir)~~	~~Montgomery~~
~~Cynthiana Municipal Water Works~~	~~Mile 51.2 of South Fork Licking River~~	~~Harrison~~
~~Flemingsburg Utilities~~	~~Mile 0.7 of UT to Town Branch (Flemingsburg Lake)~~	~~Fleming~~
~~Williamstown Municipal Water~~	~~Mile 1.89 of Lake Branch (Lake Williamstown)~~	~~Grant~~
~~Morehead State University Water Plant~~	~~Mile 0.7 of Evans Branch (Evans Branch Impoundment)~~	~~Rowan~~
~~Morehead State University Water Plant~~	~~Mile 13.7 of Tripletts Creek~~	~~Rowan~~
~~Carlisle Municipal Water Plant~~	~~Mile 3.5 of UT to Brushy Fork (City Lake)~~	~~Nicholas~~
~~Falmouth Water Plant~~	~~Mile 52.7 of Licking River~~	~~Pendleton~~
~~Morehead Utility Plant Board~~	~~Mile 177.7 of Licking River~~	~~Rowan~~
~~West Liberty Water Company~~	~~Mile 228.6 of Licking River~~	~~Morgan~~

~~[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~		
~~Western Fleming Water District~~	~~Mile 102.5 of Licking River~~	~~Nicholas~~
~~Salyersville Municipal Water Works~~	~~Mile 273.2 of Licking River~~	~~Magoffin~~
~~Cynthiana Municipal Water Works~~	~~Mile 84.5 of Licking River~~	~~Harrison~~
~~Flemingsburg Utilities~~	~~UT of Town Branch at mile 1.6 (Old Reservoir)~~	~~Fleming~~
~~Flemingsburg Utilities~~	~~Mile 131.8 of Licking River~~	~~Fleming~~
~~Carlisle Municipal Water Department~~	~~Mile 110.2 Licking River~~	~~Nicholas~~
~~West Liberty Water Company~~	~~Mile 3.9 of North Fork Licking River (Cave Run Lake)~~	~~Rowan~~
~~Cave Run Water Commission~~	~~Mile 197.4 of Licking River (Cave Run Lake)~~	~~Menifee~~
~~Rattlesnake Ridge Water District~~	~~Mile 57.4 of Little Sandy River (Grayson Lake)~~	~~Elliott~~
~~Kentucky River Basin~~		
~~Lancaster Municipal Water Works~~	~~Mile 145.2 of Kentucky River (Pool #8)~~	~~Garrard~~
~~Northpoint Training Center~~	~~Mile 17.3 of Dix River (Herrington Lake)~~	~~Boyle~~
~~Frankfort Electric & Water Plant Board~~	~~Mile 71.7 of Kentucky River (Pool #4)~~	~~Franklin~~
~~Hazard Water Department~~	~~Mile 104.1 of North Fork Kentucky River~~	~~Perry~~
~~Wilmore Utilities System~~	~~Mile 117.2 of Kentucky River (Pool #6)~~	~~Jessamine~~
~~Nicholasville Water Works~~	~~Mile 157.9 of Kentucky River (Pool #8)~~	~~Jessamine~~
~~Berea Municipal Utilities~~	~~Mile 3.6 of Cowbell Creek Cowbell Lake~~	~~Madison~~
~~Jackson Municipal Water Works~~	~~Mile 47.2 of North Fork Kentucky River~~	~~Breathitt~~
~~Kentucky American Water Company Plant A~~	~~Mile 171.5 of Kentucky River (Pool #9)~~	~~Fayette~~
~~Kentucky American Water Company Plant B~~	~~Mile 10.6 of East Hickman Creek (Reservoir #4)~~	~~Fayette~~
~~Danville Water Works~~	~~Mile 18.9 of Dix River (Herrington Lake)~~	~~Boyle~~
~~Lawrenceburg Municipal Water Works~~	~~Mile 86.2 of Kentucky River~~	~~Anderson~~
~~Versailles Municipal Water Works~~	~~Mile 87.7 of Kentucky River (Pool 5)~~	~~Woodford~~
~~Harrodsburg Municipal Water Works~~	~~Mile 121.0 of Kentucky River (Pool 7)~~	~~Mercer~~

~~[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~		
~~Stanford Water Works~~	~~Mile 6.0 of Neals Creek.(Rice Lake [Stanford City Reservoir])~~	~~Lincoln~~
~~Richmond Utilities Board~~	~~Mile 206.49 of Kentucky River (Pool 11)~~	~~Madison~~
~~Whitesburg Municipal Water Works/Veolia Water~~	~~Mile 150.9of North Fork Kentucky River~~	~~Letcher~~
~~Manchester Water Works~~	~~Mile 3.9 of Beech Creek (Bert Combs Lake)~~	~~Clay~~
~~Georgetown Municipal Water & Sewer~~	~~Mile 33.5 of North Elkhorn Creek~~	~~Scott~~
~~Beattyville Water Works~~	~~Mile 1.3 of North Fork Kentucky River (Pool #14)~~	~~Lee~~
~~Bullock Pen Water District~~	~~Mile 2.8 Of Bullock Pen Creek (Bullock Pen Lake)~~	~~Grant~~
~~Ky Parks Natural Bridge State Park~~	~~Mile 0.11 of Mill Creek (Mill Creek Lake)~~	~~Powell~~
~~Winchester Municipal Utilities~~	~~Mile 6.5 of Lower Howard Creek (Winchester Reservoir [Carol E. Ecton Reservoir])~~	~~Clark~~
~~Winchester Municipal Utilities~~	~~Mile 1180.8 of Kentucky River (Pool #10)~~	~~Clark~~
~~Campton Water Works~~	~~Mile 0.3 of Hiram Branch (Campton Lake)~~	~~Wolfe~~
~~Hyden-Leslie County Water District~~	~~Mile 75.4 of Middle Fork Kentucky River (Buckhorn Reservoir)~~	~~Leslie~~
~~Booneville Water & Sewer District~~	~~Mile 12.8 of South Fork Kentucky River~~	~~Owsley~~
~~Georgetown Municipal Water & Sewer~~	~~Mile 0.61 of UT (Royal Springs) at mile 33.5 of North Elkhorn Creek~~	~~Scott~~
~~Owenton Water Works~~	~~Mile 0.6 of Severn Creek~~	~~Owen~~
~~Owenton Water Works~~	~~Mile 1.1 of UT to North Severn Creek at mile 5.5 (Lower Thomas Lake)~~	~~Owen~~
~~Irvine Municipal Utilities~~	~~Mile 223.4 of Kentucky River (Pool #11)~~	~~Estill~~
~~Bluegrass Army Depot~~	~~Mile 0.4 of Little Muddy Creek (Lake Vega)~~	~~Madison~~
~~Beech Fork Water Commission~~	~~Mile 0.3 of Beech Fork (Beech Fork Reservoir)~~	~~Powell~~
~~Berea College Water Utility~~	~~Mile 2.1 of East Fork Silver Creek (Lower Silver Creek Lake)~~	~~Madison~~
~~Berea Municipal Utilities~~	~~Mile 2.8 of East Fork Silver Creek (Upper Silver Creek Lake~~	~~Madison~~

~~[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~		
	~~[Kales Lake])~~	
~~Berea Municipal Utilities~~	~~Mile 2.5 of Owsley Fork (Owsley Fork Lake)~~	~~Madison~~
~~Manchester Water Works~~	~~Mile 18.9 of Goose Creek~~	~~Clay~~
~~Blackey Municipal Water Works~~	~~Mile 131.0 of North Fork Kentucky River~~	~~Letcher~~
~~Beech Fork Water Commission~~	~~Mile 31.0 of Red River~~	~~Powell~~
~~Salt River Basin~~		
~~Shelbyville Municipal Water & Sewer Commission~~	~~Mile 28.0 of Guist Creek (Guist Creek Lake)~~	~~Shelby~~
~~Bardstown Municipal Water Works~~	~~Mile 1.1 of Buffalo Creek (Lake Sympson)~~	~~Nelson~~
~~Lebanon Water Works Company~~	~~Mile 98.2 of Rolling Fork River~~	~~Marion~~
~~Springfield Water Works~~	~~Mile 4.2 of Long Lick Creek (Willisburg Lake)~~	~~Washington~~
~~Lebanon Water Works Company~~	~~Mile 1.0 of Fagan Branch (Fagan Branch Reservoir)~~	~~Marion~~
~~Springfield Water Works~~	~~Mile 1.3 of Allen Branch (Springfield Reservoir)~~	~~Washington~~
~~Green River Basin~~		
~~Hidden Valley Springs~~	~~Mile 0.4 of Hidden Valley Spring of UT to Rock Creek at mile 5.9~~	~~Grayson~~
~~Morgantown Utilities Commission~~	~~Mile 144.8 of Green River~~	~~Butler~~
~~Campbellsville Water Works~~	~~Mile 1.3 of Trace Fork (City Reservoir)~~	~~Taylor~~
~~Columbia Utilities Commission~~	~~Mile 42.7 of Russell Creek~~	~~Adair~~
~~Glasgow Water Co/Plant B~~	~~Mile 22.4 of Beaver Creek~~	~~Barren~~
~~Greensburg Municipal Water Works~~	~~Mile 283.5 of Green River~~	~~Green~~
~~Livermore Water Works~~	~~Mile 71.9 of Green River~~	~~McLean~~
~~Elizabethtown Municipal Water Works A~~	~~From Old City Spring at mile 10.6 of Valley Creek~~	~~Hardin~~
~~Elizabethtown Municipal Water Works A~~	~~Gaithers Station Spring at mile 6.9 of Valley Creek~~	~~Hardin~~
~~Bowling Green Municipal Utilities~~	~~Mile 38.1 of Barren River~~	~~Warren~~
~~Green River Valley Water District~~	~~Rio Springs at UT to Green River at mile 240.6~~	~~Hart~~

~~[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~		
~~Hodgenville Water Works~~	~~Mile 5.8 of North Fork Nolin River~~	~~Larue~~
~~Hardinsburg/Us Filter~~	~~Tules Creek at mile 1.2 (Rough River Reservoir)~~	~~Breckinridge~~
~~Central City Municipal Water & Sewer~~	~~Mile 86.0 of Green River~~	~~Muhlenberg~~
~~Calhoun Water Works~~	~~Mile 63.9 of Green River~~	~~McLean~~
~~Hartford Municipal Water Works~~	~~Mile 29.8 of Rough River~~	~~Ohio~~
~~Greenville Utilities Commission~~	~~Luzerne Lake (Luzerne Lake no longer connected to Caney Creek at mile 2.3~~	~~Muhlenberg~~
~~Ohio County Water Plant~~	~~Mile 131.9 of Green River~~	~~Ohio~~
~~Franklin Water Plant~~	~~Mile 23.4 of West Fork Drake's Creek~~	~~Simpson~~
~~Glasgow Water Co/Plant A~~	~~Mile 86.8 of Barren River (Barren River Reservoir)~~	~~Barren~~
~~Leitchfield Municipal Water Works~~	~~Mile 107.7 of Rough River (Reservoir)~~	~~Grayson~~
~~Campbellsville Water Works~~	~~Mile 5.3 of Robinson Creek (Green River Reservoir)~~	~~Taylor~~
~~Edmonson County Water District~~	~~Mile 183.7 of Green River~~	~~Edmonson~~
~~Elizabethtown Municipal Water Works B~~	~~Mile 2.1 of Freeman Creek (Freeman Lake)~~	~~Hardin~~
~~Tompkinsville Municipal Water Works~~	~~Mile 6.0 of Mill Creek (Mill Creek Reservoir)~~	~~Monroe~~
~~Madisonville Municipal Water Works~~	~~Mile 54.1 of Green River~~	~~Hopkins~~
~~Liberty Water Works~~	~~Mile 0.9 of Hickman Creek (Lake Liberty)~~	~~Casey~~
~~City of Lafayette (Tennessee)~~	~~Mile 118.4 of Barren River~~	~~Monroe~~
~~Stanford Water Works~~	~~Mile 0.6 of UT to Green River (James C. Harris Reservoir)~~	~~Lincoln~~
~~Hardin County Water District #2~~	~~Nolin River at mile 75.3 (White Mills Spring)~~	~~Hardin~~
~~Green River Valley Water District~~	~~Mile 240.6 of Green River~~	~~Hart~~
~~Scottsville Municipal Water Works~~	~~Mile 88.6 of Barren River (Barren River Lake)~~	~~Allen~~
~~Butler County Water System~~	~~Mile 143.8 of Green River~~	~~Butler~~
~~Edmonson County Water District~~	~~Mile 23.5 of Nolin River (Nolin Reservoir)~~	~~Grayson~~
~~Columbia Utilities Commission~~	~~Mile 317.5 of Green River (Green River Reservoir)~~	~~Adair~~

~~[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~		
~~Henderson Water & Sewer Department~~	~~From UT at mile 0.6 to Grane Creek~~	~~Webster~~
~~Webster Cnty Water District~~	~~Mile 47.5 of Green River~~	~~Webster~~
~~Hodgenville Water Works~~	~~Mile 0.3 of UT at mile 8.1 of North Fork Nolin River (Salem Lake)~~	~~Larue~~
~~Grayson County Water District~~	~~Mile 97.7 of Rough River (Rough River Reservoir)~~	~~Grayson~~
~~Lower Cumberland River Basin~~		
~~Kentucky State Penitentiary~~	~~Mile 40.2 of Cumberland River (Lake Barkley)~~	~~Lyon~~
~~Hopkinsville Water Environmental Authority~~	~~Mile 14.2 of North Fork Little River~~	~~Christian~~
~~Eddyville Municipal Water Works~~	~~Mile 1.5 of Knob Creek (Lake Barkley)~~	~~Lyon~~
~~Princeton Water Department~~	~~Mile 41.9 of Cumberland River (Lake Barkley)~~	~~Lyon~~
~~Kuttawa Municipal Water Plant~~	~~Mile 37.9 of Cumberland River (Lake Barkley)~~	~~Lyon~~
~~Barkley Lake Water District~~	~~Mile 0.7 of Hopson Creek (Lake Barkley)~~	~~Trigg~~
~~Crittenden-Livingston Co Water District~~	~~Mile 14.0 of Cumberland River~~	~~Livingston~~
~~Hopkinsville Water Environmental Authority~~	~~From Hopkinsville Stone Quarry No. 1 (South Quarry) adjacent to North Fork Little River at mile 14.8~~	~~Christian~~
~~Cadiz Water Company~~	~~Mile 13.5 of Little River~~	~~Trigg~~
~~Hopkinsville Water Environmental Authority~~	~~Hopkinsville Stone Quarry No. 2 (North Quarry) adjacent to White Creek at mile 0.2~~	~~Christian~~
~~TVA Land Between The Lakes, Wrangler~~	~~Mile 1.0 on UT of Lick Creek at mile1.1~~	~~Trigg~~
~~Eddyville Municipal Water Works~~	~~Mile 40.2 of Cumberland River (Lake Barkley)~~	~~Lyon~~
~~Tradewater River Basin~~		
~~Providence Water Works~~	~~Mile 0.3 of Owens Creek (New Providence City Lake)~~	~~Webster~~
~~Madisonville Municipal Water Works~~	~~Mile 6.3 of Greasy Creek (Lake Pewee).~~	~~Hopkins~~
~~Earlington Water Works~~	~~Mile 0.2 of UT to Clear Creek at mile 26.5 (Loch Mary~~	~~Hopkins~~

~~[Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE~~		
	~~Reservoir)~~	
~~Dawson Springs City Water & Sewer~~	~~Mile 0.1 of Piney Creek (Lake Beshear)~~	~~Caldwell~~
~~Providence Municipal Water Works~~	~~Mile 41.3 of Tradwater River~~	~~Webster~~
~~Ohio River Basin (Main Stem And Minor Tributaries [Note: river miles follow the USGS convention of starting mileage beginning at Pittsburgh, PA and ending at river mouth])~~		
~~Maysville Utility Commission~~	~~Mile 408.5 of Ohio River~~	~~Mason~~
~~Ashland Municipal Water Works~~	~~Mile 319.68 of Ohio River~~	~~Boyd~~
~~Northern Ky Water Service Dististrict - Newport Plant~~	~~Mile 463.6 of Ohio River~~	~~Campbell~~
~~Paducah Water Works~~	~~Mile 935.6 of Ohio River~~	~~McCracken~~
~~Louisville Water Company /ZPS A~~	~~Mile 600.6 of Ohio River~~	~~Jefferson~~
~~Henderson Water & Sewer Department~~	~~Mile 803.6 of Ohio River~~	~~Henderson~~
~~Northern Ky Water Service District Plant B~~	~~Mile 462.7 of Ohio River~~	~~Campbell~~
~~Morganfield Municipal Water Works~~	~~Mile 840.0 of Ohio River~~	~~Union~~
~~Russell Water Plant~~	~~Mile 327.7 of Ohio River~~	~~Greenup~~
~~Marion Municipal Water Works~~	~~Mile 26.4 of Crooked Creek (City Lake)~~	~~Crittenden~~
~~US Army Ft Knox A~~	~~Mile 8.6 of Otter Creek~~	~~Meade~~
~~Louisville Water Company BEPWTP B~~	~~Mile 594.7 of Ohio River~~	~~Jefferson~~
~~Sturgis Municipal Water Works~~	~~Mile 871.4 of Ohio River~~	~~Union]~~

(3)**(a) Table C in this subsection lists waters that have:**

1. A designated use of CAH or OSRW; or

2. Exceptions to specific criteria in 401 KAR 10:031.

(b) All other criteria in 401 KAR 10:031 applicable to the listed use designations shall apply to surface waters listed in Table C in this subsection.

(c)1. DWS use shall apply to all waters listed in Table C in this section.

2. DWS use criteria found in 401 KAR 10:031, Section 6, shall apply only at the surface water intakes listed in Table B of this section.

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone (Descriptive and water body or segment river miles [RM])	County	Use Designation	Exceptions to Specific Criteria
BIG SANDY RIVER BASIN				
Hobbs Fork of Pigeonroost Fork of Wolf Creek	Mouth to Headwaters (0.0-3.9)	Martin	WAH, PCR, SCR, OSRW	
Lower Pigeon Branch of Elkhorn Creek	Left Fork to Headwaters (0.6-1.9)	Pike	WAH, PCR, SCR, OSRW	
Paint Creek of Levisa Fork	Levisa Fork (0.0-8.3)	Johnson	CAH, PCR, SCR	
Russell Fork of Levisa Fork of Big Sandy River	Clinch Field RR Yard off HWY 80 to Virginia State Line (15.0-16.5)	Pike	WAH, PCR, SCR, OSRW	
Toms Branch of Elkhorn Creek	Mouth to Headwaters (0.0-1.6)	Pike	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Hobbs Fork	Hobbs Fork of Pigeonroost Fork to Headwaters (0.0-0.55)	Martin	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
LITTLE SANDY RIVER BASIN				
Arabs Fork of Big Sinking Creek	Clay Fork to Headwaters (0.0-5.1)	Elliott	WAH, PCR, SCR, OSRW	
Big Caney Creek	Grayson Lake to source (1.8-15.3)	Elliott/ Rowan	CAH, PCR, SCR, OSRW	
Big Sinking Creek of Little Sandy River	SR 986 to Clay Fork and Arab Fork (6.1-15.2)	Carter/ Elliott	WAH, PCR, SCR, OSRW	
Laurel Creek of Little Sandy River	Little Sandy River to Carter School Rd (0.0-7.6)	Elliott/ Rowan	CAH, PCR, SCR,	
Laurel Creek of Little Sandy River	Carter School Rd Bridge to Headwaters (7.6-14.7)	Elliott/ Rowan	CAH, PCR, SCR, OSRW	
Meadow Branch of Little Fork of Little Sandy River	Mouth to Headwaters (0.0-1.4)	Elliott	WAH, PCR, SCR, OSRW	

Middle Fork of Little Sandy River	Mouth to Sheepskin Branch (0.0-3.4)	Elliott	WAH, PCR, SCR, OSRW	
Nichols Fork of Little Fork of Little Sandy River	Green Branch to Headwaters (0.0-2.0)	Elliott	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR, SCR	
LICKING RIVER BASIN				
Blackwater Creek of Licking River	Eaton Creek to Greasy Fork (3.8-117)	Morgan	WAH, PCR, SCR, OSRW	
Blanket Creek of Licking River	Mouth to Unidentified Tributary (0.0-1.9)	Pendleton	WAH, PCR, SCR, OSRW	
Botts Fork of Brushy Fork of Licking River	Mouth to Landuse Change (0.0-2.1)	Menifee	WAH, PCR, SCR, OSRW	
Bowman Creek	Mouth to Unidentified Tributary (0.0-6.0)	Kenton	WAH, PCR, SCR, OSRW	
Brushy Fork of Meyers Creek	Cave Run Lake Backwaters to Headwaters (0.7-5.6)	Menifee	WAH, PCR, SCR, OSRW	
Brushy Fork of South Fork of Grassy Creek	Mouth to Headwaters (0.0-5.8)	Pendleton	WAH, PCR, SCR, OSRW	
Bucket Branch of North Fork of Licking River	Mouth to Headwaters (0.0-1.9)	Morgan	WAH, PCR, SCR, OSRW	
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek (0.0-1.7)	Robertson	WAH, PCR, SCR, OSRW	
Craney Creek	Source to North Fork of Licking River (0.0-11.2)	Rowan/ Morgan	CAH, PCR, SCR, OSRW	
Devils Fork of North Fork of Licking River	Mouth to Headwaters (0.0-8.5)	Elliott/ Morgan	WAH, PCR, SCR, OSRW	
Flour Creek of Licking River	Mouth to Unidentified Tributary (0.0-2.2)	Pendleton	WAH, PCR, SCR, OSRW	
Grovers Creek of Kincaid Creek	Kincaid Lake Backwaters to Unidentified Tributary (0.5-3.4)	Bracken/ Pendleton	WAH, PCR, SCR, OSRW	
Licking River	River Mile 175.6 (U.S. Highway 60 Bridge) to River Mile 180.8 (Cave Run Lake Dam (175.6-180.8)	Bath/ Rowan	CAH, PCR, SCR	
Licking River	River Mile 159.5 [4] (Hwy 211) to River Mile 170.6 (Unnamed Road off Slatey Point Road)	Bath/ Rowan/ Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 19.3 (Hwy 536 Bridge) to River Mile 117.6 (1.3 river miles above Fishtrap Creek)	Kenton/ Campbell/ Pendleton/ Harrison/ Robertson/ Fleming	WAH, PCR, SCR, OSRW	
Minor Creek of Craney Creek	Mouth to river mile 2.8 (0.0-2.8)	Morgan/ Rowan	CAH, PCR, SCR	
North Fork of Licking River	Cave Run Lake Backwaters to Devils Fork (8.4-13.4)	Morgan	WAH, PCR, SCR, OSRW	
Sawyers Fork of Cruises Creek	Mouth to Headwaters (0.0-3.3)	Kenton	WAH, PCR, SCR, OSRW	
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters (0.0-3.7)	Rowan	CAH, PCR, SCR, OSRW	
Slate Creek of Licking River	Mouth to Mill Creek (0.0-13.55)	Bath	WAH, PCR, SCR, OSRW	
South Fork Grassy Creek of Grassy Creek of Licking River	Mouth to Greasy Creek (0.0-19.8)	Kenton/ Pendleton	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters 0.0-2.2)	Mason	WAH, PCR, SCR, OSRW	
Welch Fork of Brushy Fork of Licking River	Mouth to First Unnamed Tributary (0.0-1.0)	Menifee	WAH, PCR, SCR, OSRW	
West Creek of Licking River	Mouth to Headwaters (0.0-9.8)	Harrison/ Robertson	WAH, PCR, SCR, OSRW	
KENTUCKY RIVER BASIN				
Backbone Creek of Sixmile Creek of Kentucky River	Mouth to Scrabble Creek (0.0-1.65)	Franklin/ Henry/ Shelby	WAH, PCR, SCR, OSRW	
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters (0.3-1.2)	Perry	WAH, PCR, SCR, OSRW	

Big Double Creek of Red Bird River	Mouth to Confluence of Left and Right Forks of Big Double Creek (0.0-4.04)	Clay	WAH, PCR, SCR, OSRW	
Bill Branch of Laurel Fork of Greasy Creek	Mouth to Right Fork and Left Fork Creek (0.0-0.3)	Leslie	WAH, PCR, SCR, OSRW	
Billey Fork of Millers Creek	Land Use Change to Headwaters (2.6-8.8)	Lee/Elliott	WAH, PCR, SCR, OSRW	
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-0.3)	Owsley	WAH, PCR, SCR, OSRW	
Buffalo Creek of South Fork of Kentucky River	Mouth to Right Fork and Left Fork (0.0-1.6)	Owsley	WAH, PCR, SCR, OSRW	
Cavanaugh Creek	South Fork of Station Camp Creek to Foxtown Rd (0.0-8.3)	Jackson	WAH, PCR, SCR, OSRW	
Cherry Run of Boyd Run of North Elkhorn Creek	Mouth to Boyd Run (0.0-0.9)	Scott	WAH, PCR, SCR, OSRW	
Chester Creek of Middle Fork of Red River	Mouth to Headwaters (0.0-2.8)	Wolfe	WAH, PCR, SCR, OSRW	
Chimney Top Creek of Red River	Basin (0.0-4.6)	Wolfe	CAH, PCR, SCR	
Clear Creek of Kentucky River	Mouth to East Fork Clear Creek (0.0-9.0)	Woodford	WAH, PCR, SCR, OSRW	
Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-4.8)	Breathitt	WAH, PCR, SCR, OSRW	
Coles Fork of Buckhorn Creek	Mouth to Headwaters (0.0-6.2)	Breathitt	WAH, PCR, SCR, OSRW	
Craig Creek of Kentucky River	Mouth (Kentucky River Backwaters) to Unidentified Tributary (0.0- 2.7)	Woodford	WAH, PCR, SCR, OSRW	
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters (0.3-1.35)	Leslie	WAH, PCR, SCR, OSRW	
Dix River	Mouth (Kentucky River) to River Mile 3.1 (Herrington Lake Dam) (0.0-3.1)	Garrard/ Mercer	CAH, PCR, SCR	
Dog Fork of Swift Camp Creek	Basin	Wolfe	CAH, PCR, SCR	
Drennon Creek of Kentucky River	Fivemile Creek to Town Branch (8.7-12.2)	Henry	WAH, PCR, SCR, OSRW	
East Fork of Indian Creek of Indian Creek of Red River	Headwaters East Fork of Indian Creek to Indian Creek (0.0-9.0)	Menifee	CAH, PCR, SCR OSRW	
Elisha Creek of Red Bird River	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek (0.8-1.8)	Leslie	WAH, PCR, SCR, OSRW	
Emily Run of Drennon Creek	Mouth to Unidentified Tributary (0.0-4.0)	Henry	WAH, PCR, SCR, OSRW	
Evans Fork of Billey Fork of Millers Creek	Mouth to Headwaters (0.0-3.0)	Estill	WAH, PCR, SCR, OSRW	
Falling Rock Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-0.7)	Breathitt	WAH, PCR, SCR, OSRW	
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary (0.0-2.6)	Anderson	WAH, PCR, SCR, OSRW	
Gladie Creek of Red River	Basin	Menifee	CAH, PCR, SCR	
Gladie Creek of Red River	Land Use Change to Long Branch (0.5-7.25)	Menifee	CAH, PCR, SCR, OSRW	
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek (0.0-9.1)	Clay/Leslie	WAH, PCR, SCR, OSRW	
Griers Creek of Kentucky River	Kentucky River Backwaters to Unidentified Tributary (0.1-3.5)	Woodford	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky River	Kentucky River Backwaters to Headwaters (0.1-1.9)	Franklin	WAH, PCR, SCR, OSRW	
Hardwick Creek of Red River	Mouth to Little Hardwick Creek (0.0-3.25)	Powell	WAH, PCR, SCR, OSRW	
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork (0.0-2.1)	Leslie	WAH, PCR, SCR, OSRW	
Hines Creek of Kentucky River	Kentucky River Backwaters to confluence with Unidentified Tributary (0.1-1.9)	Madison	WAH, PCR, SCR, OSRW	
Honey Branch of Greasy Creek of Middle Fork of Kentucky River	Mouth to Headwaters (0.0-1.35)	Leslie	WAH, PCR, SCR, OSRW	
Hopper Cave Branch of Cavanaugh Creek	Mouth to Headwaters (0.0-1.8)	Jackson	WAH, PCR, SCR, OSRW	

Indian Creek of Eagle Creek	Mouth to Headwaters (0.0-5.4)	Carroll	WAH, PCR, SCR, OSRW	
Indian Creek of Red River	River Mile 1.25 (East Fork of Indian Creek) to River Mile 5.2 (0.3 river miles below Bear Branch)	Menifee	CAH, PCR, SCR	
Indian Fork of Sixmile Creek of Kentucky River	Mouth to Headwaters (0.0-3.3)	Shelby	WAH, PCR, SCR, OSRW	
John Carpenter Fork of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.2)	Breathitt	WAH, PCR, SCR, OSRW	
Katies Creek of Red Bird River	Mouth to Headwaters (0.0-4.0)	Clay	WAH, PCR, SCR, OSRW	
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek	Cortland Fork to Big Branch (0.0-3.75)	Owsley	WAH, PCR, SCR, OSRW	
Left Fork of Big Double Creek of Kentucky River	Mouth to Headwaters (0.0-1.5)	Clay	WAH, PCR, SCR, OSRW	
Line Fork of North Fork of Kentucky River	Defeated Creek to Headwaters (12.2-28.6)	Letcher	WAH, PCR, SCR, OSRW	
Little Middle Fork of Elisha Creek of Red Bird River	Mouth to Headwaters (0.0-0.75)	Leslie	WAH, PCR, SCR, OSRW	
Little Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.2)	Breathitt	WAH, PCR, SCR, OSRW	
Little Sixmile Creek of Sixmile Creek of Kentucky River	Mouth to Headwaters (0.0-5.3)	Henry	WAH, PCR, SCR, OSRW	
Lower Howard Creek of Kentucky River	Mouth to West Fork (0.5- 6.6)	Clark	WAH, PCR, SCR, OSRW	
Lulbegrud Creek of Red River	Mouth to Falls Branch (0.0-7.3)	Clark/ Powell	WAH, PCR, SCR, OSRW	
Middle Fork of Kentucky River	Mouth to Upper Twin Creek (0.0-12.7)	Lee/ Owsley	WAH, PCR, SCR, OSRW	
Middle Fork of Kentucky River	Hurts Creek to Greasy Creek (75.6-85.8)	Leslie	WAH, PCR, SCR, OSRW	
Middle Fork of Red River	River Mile 10.7 (0.7 river miles below Sinking Fork) to Headwaters (15.3)	Powell	CAH, PCR, SCR	
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake (1.8-7.2)	Powell	CAH, PCR, SCR, OSRW	
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-0.7)	Owsley	WAH, PCR, SCR, OSRW	
Mill Creek of Kentucky River	Near Mouth to Headwaters (0.0-1.85)	Owen	WAH, PCR, SCR, OSRW	
Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters (0.0-1.85)	Breathitt	WAH, PCR, SCR, OSRW	
Muddy Creek of Kentucky River	Elliston, Kentucky to Viney Fork (13.8-20.65)	Madison	WAH, PCR, SCR, OSRW	
Musselman Creek of Eagle Creek	Mouth to Headwaters (0.0-9.0)	Grant	WAH, PCR, SCR, OSRW	
Parched Corn Creek	Source to Red River (0.0-2.25)	Wolfe	CAH, PCR, SCR	
Red River	River Mile 70.4 (SR 746) to River Mile 50.3 (0.1 Miles below Auxier Branch)	Menifee/ Wolfe	WAH, PCR, SCR, OSRW	
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek (0.0-15.3)	Clay	WAH, PCR, SCR, OSRW	
Right Fork of Buffalo Creek of Kentucky River	Mouth to Headwaters (0.0-2.1)	Owsley	WAH, PCR, SCR, OSRW	
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters (0.0-3.3)	Leslie	WAH, PCR, SCR, OSRW	
Roaring Fork of Lewis Fork of Buckhorn Creek	Mouth to Headwaters (0.0-0.9)	Breathitt	WAH, PCR, SCR, OSRW	
Rock Lick Creek	Mouth to Headwaters (0.0-9.6)	Jackson	WAH, PCR, SCR, OSRW	
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters (0.1-3.9)	Henry	WAH, PCR, SCR, OSRW	
Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork of Severn Creek (1.35-3.0)	Owen	WAH, PCR, SCR, OSRW	
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run (0.1-1.4)	Mercer	WAH, PCR, SCR, OSRW	
Shelly Rock Fork of Millseat Branch of Clemons Fork	Mouth to Headwaters (0.0-0.6)	Breathitt	WAH, PCR, SCR, OSRW	

Sixmile Creek of Kentucky River	Little Sixmile Creek to Dam (7.1-15.3)	Henry	WAH, PCR, SCR, OSRW	
South Fork of Kentucky River	Mouth to Sexton Creek (0.0-27.8)	Owsley	WAH, PCR, SCR, OSRW	
South Fork of Red River	Mouth to Sandlick Fork (0.0-4.2)	Powell	WAH, PCR, SCR, OSRW	
South Fork of Station Camp Creek of Kentucky River	Mouth to Rock Lick Creek (0.0-9.7)	Jackson	WAH, PCR, SCR, OSRW	
Spruce Branch of Redbird River	Mouth to Headwaters (0.0-1.0)	Clay	WAH, PCR, SCR, OSRW	
Station Camp Creek of Kentucky River	Landuse Change (Crooked Cr.) to South Fork of Station Camp Creek (3.3-22.7)	Estill	WAH, PCR, SCR, OSRW	
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary (0.0-4.2)	Fayette	WAH, PCR, SCR, OSRW	
Steer Fork of War Fork of Station Camp Creek	Mouth to Headwaters (0.0-2.7)	Jackson	CAH, PCR, SCR, OSRW	
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek (1.3-13.7)	Lee/ Owsley	WAH, PCR, SCR, OSRW	
Sugar Creek of Redbird River	Landuse Change to Headwaters (0.6-5.4)	Leslie	WAH, PCR, SCR, OSRW	
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters (0.0-5.2)	Franklin	WAH, PCR, SCR, OSRW	
Swift Camp Creek	Red River to Source (0.0-13.9)	Wolfe	CAH, PCR, SCR	
Unidentified Tributary of Cawood Branch of Beech Fork	Mouth to Headwaters (0.0-2.1)	Leslie	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters (0.0-1.4)	Owen	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glenns Creek of Kentucky River	Mouth to Headwaters (0.0-1.9)	Woodford	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters (0.0-1.15)	Madison	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Kentucky River	Mouth at Kentucky River Backwaters to Land Use Change (0.1-1.4)	Franklin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)	Mouth to Headwaters (0.0-0.6)	Letcher	WAH, PCR, SCR, OSRW	
War Fork of Station Camp Creek	Mouth to Headwaters (0.0-13.8)	Jackson	CAH, PCR, SCR, OSRW	
War Fork of Station Camp Creek	Basin above River Mile 1.9 (0.3 river miles below—Tarpin Lick Branch (2.5))	Jackson	CAH, PCR, SCR	
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters (0.0-1.0)	Owsley	WAH, PCR, SCR, OSRW	
Wolfpen Creek of Red River	Mouth to Headwaters (0.0-3.6)	Menifee	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR	
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR	
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR	
SALT RIVER BASIN				
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek (13.0-25.9)	Shelby/ Spencer	WAH, PCR, SCR, OSRW	
Cedar Creek of Salt River	Mouth to Greens Branch (0.0-5.2)	Bullitt	WAH, PCR, SCR, OSRW	
Chaplin River of Salt River	Thompson Creek to Cornishville, KY (40.9-54.2)	Washington	WAH, PCR, SCR, OSRW	
Doctors Fork of Chaplin River	Mouth to Begley Branch (0.0-3.8)	Boyle	WAH, PCR, SCR, OSRW	
Guist Creek of Brashears Creek	Mouth to Jeptha Creek (0.0-15.7)	Spencer	WAH, PCR, SCR, OSRW	
Harts Run of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-1.8)	Bullitt	WAH, PCR, SCR, OSRW	

Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary (0.0-2.9	Mercer	WAH, PCR, SCR, OSRW	
Lick Creek of Long Lick Creek of Beech Fork of Salt River	Mouth to 0.1miles below Dam (0.0-4.1)	Washington	WAH, PCR, SCR, OSRW	
Otter Creek of Rolling Fork of Salt River	Landuse Change to confluence of East Fork and Middle Fork Otter Creek (1.7-2.9)	Larue	~~[C]~~ WAH, PCR, SCR, OSRW	
Overalls Creek of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters of Middle Fork of Overalls Creek (0.0-3.2)	Bullitt	WAH, PCR, SCR, OSRW	
Paddy's Run	Mouth (Ohio River) to headwaters	Jefferson	PCR, SCR	401 KAR 10:031, Section 2(1)(d) and 2(2) do not apply.
Rolling Fork of Salt River	River Mile 53.6 (0.8 mi upstream of Stiles Rd Bridge) to River Mile 62.5 (0.5 mi upstream of Otter Cr)	Larue/ Nelson	WAH, PCR, SCR, OSRW	
Salt Lick Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-8.6)	Larue, Marion	WAH, PCR, SCR, OSRW	
Sulphur Creek of Chaplin River	Mouth to confluence of Cheese Lick and Brush Creek (0.0-10.0)	Anderson/ Mercer/ Washington	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters (0.0-2.3)	Washington	WAH, PCR, SCR, OSRW	
West Fork of Otter Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-5.1)	Larue	WAH, PCR, SCR, OSRW	
Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters (0.0-18.4)	Bullitt/ Nelson	WAH, PCR, SCR, OSRW	
GREEN RIVER BASIN				
Barren River	Green River to River Mile Lock and Dam #1 to Green River (0.0-15.1)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Beaverdam Creek	Source to Green River (14.5-0.0)	Edmonson	CAH, PCR, SCR, OSRW	
Cane Run of Nolin River	Nolin River Lake Backwaters to Headwaters (0.8-6.5)	Hart	WAH, PCR, SCR, OSRW	
Caney Fork of Peter Creek	Mouth to Headwaters (0.0-6.7)	Barren	WAH, PCR, SCR, OSRW	
Clifty Creek of Rough River	Barton Run to Western Kentucky Parkway (7.5-17.3)	Grayson	WAH, PCR, SCR, OSRW	
Clifty Creek of Wolf Lick Creek	Little Clifty Creek to Sulphur Lick 0.0-13.4)	Todd	WAH, PCR, SCR, OSRW	
Double Sink Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
East Fork of Little Barren River	Red Lick Creek to Flat Creek (18.9-20.6)	Metcalfe	WAH, PCR, SCR, OSRW	
Echo River	Basin Outside Mammoth Cave National Park Boundary (underground system)	Edmonson	CAH, PCR, SCR, OSRW	
Ellis Fork of Damron Creek	Mouth to Headwaters (0.0-2.2)	Adair/ Russell	WAH, PCR, SCR, OSRW	
Falling Timber Creek of Skaggs Creek	Landuse Change to Headwaters (10.8-15.2)	Barren/ Metcalfe	WAH, PCR, SCR, OSRW	
Fiddlers Creek of North Fork of Rough River	Mouth to Headwaters (0.0-5.9)	Breckinridge	WAH, PCR, SCR, OSRW	
Forbes Creek of Buck Creek of East Fork of Pond River	Mouth to Unidentified Tributary (0.0-4.1)	Christian	WAH, PCR, SCR, OSRW	
Ganter Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Gasper River of Barren River	Clear Fork to Wiggington Creek (17.2-35.6)	Logan/ Warren	WAH, PCR, SCR, OSRW	
Goose Creek of Green River	Mouth to Little Goose Creek (0.0-8.5)	Casey/ Russell	WAH, PCR, SCR, OSRW	
Green River	River Mile 210.6 (eastern Mammoth Cave National Park Boundary to River Mile 309.1 (Green River Lake Dam)	Hart/Taylor/ Green	WAH, PCR, SCR, OSRW	

Green River	River Mile 185.0 (western Mammoth Cave National Park Boundary) to River Mile 210.6 (eastern Mammoth Cave National Park Boundary)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek (185.0-250.3)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	River Mile 149.7 (1.0 river mile below Lock and Dam #4) to River Mile 170.2 (Lock and Dam #5)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Halls Creek of Rough River	Unidentified Tributary to Headwaters (4.8-9.6)	Ohio	WAH, PCR, SCR, OSRW	
Lick Creek of West Fork of Drakes Creek	Mouth to Headwaters (0.0-10.2)	Simpson	CAH, PCR, SCR, OSRW	
Linders Creek of Rough River	Mouth to Sutzer Creek (0.0-7.9)	Hardin	WAH, PCR, SCR, OSRW	
Little Beaverdam Creek of Green River	Mouth to SR 743 (0.0-11.4)	Edmonson/ Warren	WAH, PCR, SCR, OSRW	
Little Short Creek of Rough River	Mouth to Headwaters (0.0-3.1)	Grayson	WAH, PCR, SCR, OSRW	
Lynn Camp Creek	Green River to Source (0.0-8.3)	Hart	CAH, PCR, SCR	
Lynn Camp Creek of Green River	Mouth to Lindy Creek (0.0-8.5)	Hart	CAH, PCR, SCR, OSRW	
McFarland Creek of West Fork of Pond River	Grays Branch to Unidentified Tributary (1.5-5.0)	Christian	WAH, PCR, SCR, OSRW	
McCoy Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch (5.2-14.0)	Grayson/ Hardin	WAH, PCR, SCR, OSRW	
Mile 205.7 Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Muddy Creek of Caney Creek of Rough River	Landuse Change to Headwaters (13.5-15.5)	Ohio	WAH, PCR, SCR, OSRW	
Nolin River	River Mile 7.7 (Nolin Lake Dam) to Green River (0.0-7.7)	Edmonson	CAH,WAH, PCR, SCR	
North Fork of Rough River	Buffalo Creek to Reservoir Dam (22.1 -26.9)	Breckinridge	WAH, PCR, SCR, OSRW	
Peter Creek of Barren River	Caney Fork to Dry Fork (11.6-18.5)	Barren	WAH, PCR, SCR, OSRW	
Pike Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Pond Run of Rough River	Landuse Change to Headwaters (1.4-6.8)	Breckinridge/Ohio	WAH, PCR, SCR, OSRW	
Rough River	Linders Creek to Vertrees Creek (138.0-149.4	Hardin	WAH, PCR, SCR, OSRW	
Rough River	River Mile 89.6 to Rough River Lake Dam to 90.4	Ohio/ Grayson	CAH,WAH, PCR, SCR	
Rough River	River Mile 74.5 to River Mile 74.2 (Hwy 54 Bridge)	McLean/ Ohio	CAH, PCR, SCR	
Roundstone Creek of Nolin River	Hwy 1140 (River Mile 3.8) to Headwaters (River Mile 10.25)	Hart	CAH, PCR, SCR	
Running Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Russell Creek of Green River	Mouth to Columbia WWTP (0.0-40.0)	Green/ Adair	WAH, PCR, SCR, OSRW	
Russell Creek of Green River	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek (56.9 -66.3)	Adair, Russell	WAH, PCR, SCR, OSRW	
Sixes Creek of Indian Camp Creek	Wild Branch to Headwaters (2.0-7.5)	Ohio	WAH, PCR, SCR, OSRW	
Suds Spring	Basin Outside Mammoth Cave National Park Boundary	Hart/ Barren	CAH, PCR, SCR, OSRW	
Sulphur Branch of Alexander Creek	Mouth to Headwaters (0.0-3.0)	Edmonson	WAH, PCR, SCR, OSRW	
Thompson Branch	Webb Branch to Tennessee State Line (0.3-1.5)	Simpson	WAH, PCR, SCR, OSRW	
Trammel Fork of West Fork of Drakes Creek	River Mile 30.6 (Kentucky/Tennessee State Line) to Hwy 31E (River Mile 23.8)	Allen	CAH, PCR, SCR,	

Trammel Fork of West Fork of Drakes Creek	Mouth to Tennessee State Line (0.0-30.6)	Allen/ Warren	CAH, PCR, SCR, OSRW	
Turnhole Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/ arren	CAH, PCR, SCR, OSRW	
Underground River System	Mammoth Cave National Park	Edmonson/ Hart/Barren	CAH, PCR, SCR, OSRW	
Unidentified Tributary of Green River	Landuse Change to Headwaters (1.7-3.2)	Adair	WAH, PCR, SCR, OSRW	
Unidentified Tributary of White Oak Creek	Hovious Rd Crossing to SR 76 (0.0-2.1)	Adair	WAH, PCR, SCR, OSRW	
West Fork of Pond River	Unidentified Tributary to East Branch of Pond River (12.45 -22.5)	Christian	WAH, PCR, SCR, OSRW	
TRADEWATER RIVER BASIN				
East Fork of Flynn Fork of Tradewater River	Landuse Change (US Hwy 62) to Headwaters (2.15-4.6)	Caldwell	WAH, PCR, SCR, OSRW	
Piney Creek of Tradewater River	Lake Beshear Backwaters to Headwaters (4.5-10.2)	Caldwell, Christian	WAH, PCR, SCR, OSRW	
Sandlick Creek of Tradewater River	Camp Creek to Headwaters (4.5-8.6)	Christian	WAH, PCR, SCR, OSRW	
Tradewater River	Dripping Springs Branch to Buntin Lake Dam (126.2-133.9)	Christian	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Piney Creek of Tradewater River	Mouth to Headwaters (0.0-2.9)	Caldwell	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters (0.0-1.4)	Christian	WAH, PCR, SCR, OSRW	
LOWER CUMBERLAND RIVER BASIN				
Casey Creek	Mouth to headwaters (0.0-10.5	Trigg	CAH, PCR, SCR	
Crooked Creek of Cumberland River	Energy Lake Backwaters to Headwaters (3.0-9.1)	Trigg	WAH, PCR, SCR, OSRW	
Donaldson Creek of Cumberland River	Barkley Lake Backwaters to Unnamed Tributary	Trigg	WAH, PCR, SCR, OSRW	
Elk Fork of Red River of Cumberland River	Tennessee State Line to Dry Branch (7.5-23.1)	Todd	WAH, PCR, SCR, OSRW	
Skinframe Creek	Livingston Creek to (0.0-7.8)	Lyon	CAH, PCR, SCR	
Sugar Creek of Cumberland River	Lick Creek to Unidentified Tributary (2.2-6.9)	Livingston	WAH, PCR, SCR, OSRW	
Sulphur Spring Creek	Red River to Headwaters (0.0-9.1)	Simpson	CAH, PCR, SCR	
West Fork of Red River	State Line to River Mile 29.0 (14.5-32.2)	Christian	CAH, PCR, SCR, OSRW	
Whipporwill Creek	Red River to Headwaters (0.0-45.4)	Logan/Todd	WAH, PCR, SCR, OSRW	
UPPER CUMBERLAND RIVER BASIN				
Acorn Fork of Stinking Creek	Basin above River Mile 1.0 (1.0-3.3)	Knox	WAH, PCR, SCR, OSRW	
Adams Branch of Pigeon Roost Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Archers Creek of Cumberland River	Basin (above RM 0.05 mi backwater at mouth)	Whitley	WAH, PCR, SCR, OSRW	
Bad Branch of Poor Fork of Cumberland River	Basin	Letcher	CAH, PCR, SCR, OSRW	
Bark Camp Creek of Cumberland River	Basin (above RM 0.1 backwater at mouth)	Whitley	CAH, PCR, SCR, OSRW	
Barren Fork of Indian Creek	Basin	McCreary	PCR, SCR, OSRW	
Beaver Creek of Cumberland River	Basin	McCreary	CAH, PCR, SCR, OSRW	
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch (0.0-5.7)	Pulaski	WAH, PCR, SCR, OSRW	
Bens Fork of Little Clear Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Big Branch of Marsh Creek	Basin above River Mile 0.8	McCreary	WAH, PCR, SCR, OSRW	
Big Lick Branch of Cumberland River	Basin (above 1.1, Cumberland River backwaters)	Pulaski	WAH, PCR, SCR, OSRW	
Blacksnake Branch of Brownies Creek	Basin	Bell	WAH, PCR, SCR, OSRW	

Breedens Creek of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Brices Creek of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Brownies Creek of Cumberland River	Basin above Blacksnake Branch (RM 10.3)	Harlan	WAH, PCR, SCR, OSRW	
Brush Creek of Roundstone Creek	Wolf Creek to Reemergence of Sinking Creek (1.1-7.6)	Rockcastle	WAH, PCR, SCR, OSRW	
Brushy Creek of Buck Creek	Mouth to Headwaters (0.0-16.5)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Cumberland River	River Mile 11.7 (Backwaters of Lake Cumberland) to RM 55.0 (0.8 RM upstream of confluence of Hurricane Creek)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Clear Fork of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bucks Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Buffalo Creek of Laurel Fork of Clear Fork of Cumberland River	Basin above Kentucky/ Tennessee State Line	Whitley	WAH, PCR, SCR, OSRW	
Bunches Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Campbell Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cane Creek of Rockcastle River	Mouth to Dam (0.0-11.85)	Laurel	WAH, PCR, SCR, OSRW	
Caney Creek of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Cannon Creek of Yellow Creek	Basin above Cannon Creek Lake (RM 5.1)	Bell	WAH, PCR, SCR, OSRW	
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch (0.0-2.7)	Pulaski	WAH, PCR, SCR, OSRW	
Clover Bottom Creek	Horse Lick Creek to River Mile 1.4	Jackson	CAH, PCR, SCR	
Cogur Fork of Indian Creek	Basin	McCreary	CAH, PCR, SCR, OSRW	
Coles Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Colliers Creek of Poor Fork of Cumberland River	Basin	Bell	WAH, PCR, SCR, OSRW	
Criscillis Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	River Mile 549.65 (Backwaters Lake Cumberland) to River Mile 566.1 (0.2 mile below Summer Shoals)	McCreary/ Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	Kentucky/Tennessee state line (River Mile 379.8) to River Mile 456.7 (Lake Cumberland Dam)	Clinton, Cumberland, Russell, Monroe	CAH, PCR, SCR	
Davis Branch of Little Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Dog Slaughter Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Dolen Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Eagle Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW	
FishTrap Branch	Basin above River Mile 0.5 (Lake Cumberland backwaters)	McCreary	WAH, PCR, SCR, OSRW	
Four Mile Creek of Cumberland River	Basin above River Mile 2.5	Bell	WAH, PCR, SCR, OSRW	
Four Mile Run of Yellow Creek Bypass	Basin above River Mile 1.0	Bell	WAH, PCR, SCR, OSRW	
Fugitt Creek of Clover Fork of Cumberland River	Basin	Harlan	CAH, PCR, SCR, OSRW	
Hale Fork of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Hawk Creek of Rockcastle River	Basin	Laurel	CAH, PCR, SCR	
Hinkle Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	

Honeycutt Branch of Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Horse Lick Creek	Mouth (0.0) at Middle Fork of Rockcastle River to River Mile 12.3 (Clover Bottom Creek)	Jackson/ Rockcastle	WAH, PCR, SCR, OSRW	
Howards Creek of Illwill Creek of Wolf River	Dale Hollow Reservoir Backwaters to Headwaters	Clinton	WAH, PCR, SCR, OSRW	
Hunting Shirt Branch of Richland Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Indian Creek of Cumberland River	Kilburn Fork to Barren Fork (2.4-6.8)	McCreary	WAH, PCR, SCR, OSRW	
Indian Creek of Cumberland River	Basin above and including Barren Fork	McCreary	CAH, PCR, SCR, OSRW	
Jackie Branch of Bark Camp Creek	Mouth to Headwaters (0.0-1.65)	Whitley	CAH, PCR, SCR, OSRW	
Jellico Creek of Cumberland River	River Mile 22.5 (confluence with Capuchin Creek) to River Mile 25.3 (Kentucky/Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW	
Jennys Branch of Laurel Fork of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Kelly Branch of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Kennedy Creek of Little South Fork of Cumberland River	Little South Fork of Cumberland River to River Mile 1.0	Wayne	WAH, PCR, SCR, OSRW	
Kilburn Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Creek of Marsh Creek	River Mile 3.1 (Jennys Branch) to River Mile 9.0 (Dam)	McCreary	CAH, PCR, SCR, OSRW	
Laurel Fork of Clear Fork of Cumberland River	Basin above River Mile 16.0 (John Partin Road off Hwy 190)	Bell	WAH, PCR, SCR, OSRW	
Laurel Fork of Clear Fork of Cumberland River	River Mile 4.25 (Kentucky/Tennessee state line) to River Mile 16.0 (John Partin Road off Hwy 90)	Whitley	WAH, PCR, SCR, OSRW	
Laurel Fork of Kilburn Fork	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Fork of Middle Fork Rockcastle River	Middle Fork of Rockcastle River to Headwaters (0.0-12.3)	Jackson	WAH, PCR, SCR, OSRW	
Laurel River	River Mile 0.9 to Laurel River Lake Dam (0.9-2.4)	Laurel, Whitley	CAH, PCR, SCR	
Lick Fork of Yellow Creek By-Pass of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Little Popular Creek of Cumberland River	Basin above Hubbs Creek (4.4)	Knox	WAH, PCR, SCR, OSRW	
Little South Fork of Cumberland River	River Mile 4.4 (backwaters of Lake Cumberland) to River Mile 35.5 (Confluence with Langham Branch)	Wayne, McCreary	WAH, PCR, SCR, OSRW	
Long Branch of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Looney Creek of Poor Fork of Cumberland River	Basin above River Mile 5.9 (Lynch City Limits)	Harlan	CAH, PCR, SCR	
Marsh Creek	Basin above River Mile 24.6 (Confluence with Murphy Creek) to River Mile 26.5 (within Kentucky)	McCreary	WAH, PCR, SCR, OSRW	
Marsh Creek	River Mile 0.05 (confluence with Cumberland River) to River Mile 24.6 (confluence with Murphy Creek)	McCreary	WAH, PCR, SCR, OSRW	
Martins Fork	Basin above River Mile 32.7 (Cumberland Gap National Historical Park Boundary)	Bell	CAH, PCR, SCR	
Martins Fork	River Mile 27.2 to River Mile 32.7 (Cumberland Gap National Historical Park Boundary)	Bell, Harlan	CAH, PCR, SCR, OSRW	
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch (0.8-6.2)	Monroe	WAH, PCR, SCR, OSRW	
Meadow Fork of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	

Meshack Creek of Cumberland River	Mouth to Pitcock Branch (0.0-2.8)	Monroe	WAH, PCR, SCR, OSRW	
Middle Fork of Rockcastle River	Confluence of Middle and South Forks of Rockcastle River (River Mile 0.0) to River Mile 7.9 (confluence of Indian Creek and Laurel Fork)	Jackson	WAH, PCR, SCR, OSRW	
Mill Branch of Stinking Creek	Basin above reservoir backwaters (0.8)	Knox	WAH, PCR, SCR, OSRW	
Mill Creek of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Mill Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW	
Moore Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Mud Creek of Clear Fork of Cumberland River	Basin above River Mile 6.5 (0.3 river miles above Siler Cemetery Road Bridge)	Whitley	WAH, PCR, SCR, OSRW	
Mud Camp Creek of Cumberland River	Mouth to Collins Branch (0.0-1.2)	Cumberland	WAH, PCR, SCR, OSRW	
Mud Camp Creek of Cumberland River	Unidentified Tributary to Headwaters (3.8-8.8)	Cumberland/ Monroe	WAH, PCR, SCR, OSRW	
Mud Lick of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Ned Branch of Rockcastle River	Basin above backwaters (RM 0.45)	Laurel	WAH, PCR, SCR, OSRW	
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork (14.0-22.1)	Wayne	WAH, PCR, SCR, OSRW	
Patterson Creek of Cumberland River	Basin above River Mile 7.3 (confluence with Rose Creek)	Whitley	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Franks Creek to- Headwaters (48.7-52.4)	Letcher	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Basin above River Mile 48.1 (at Joseph Road off of Hwy 932)	Letcher	CAH, PCR, SCR, OSRW	
Presley House Branch of Poor Fork of Cumberland River	Mouth to Headwaters (0.0-1.5)	Letcher	WAH, PCR, SCR, OSRW	
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.85)	McCreary	WAH, PCR, SCR, OSRW	
Richland Creek of Cumberland River	Basin above River Mile 15.8 (0.5 stream miles above Hubbard Branch) to River Mile 21.4	Knox	WAH, PCR, SCR, OSRW	
Roaring Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Rock Creek of South Fork of Cumberland River	Kentucky/Tennessee State Line (River Mile 21.5) to White Oak Creek	McCreary	CAH, PCR, SCR, OSRW	
Rock Creek of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Rockcastle River	River Mile 8.95 (backwaters of Lake Cumberland) to River Mile 54.7 (confluence of Middle Fork and South Fork Rockcastle River)	Laurel/ Pulaski	WAH, PCR, SCR, OSRW	
Ross Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Roundstone Creek of Rockcastle River	River Mile 13.5 (confluence of Renfro Creek) to River Mile 26.4 (Interstate I-75)	Rockcastle	WAH, PCR, SCR, OSRW	
Ryans Creek of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Sanders Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Cumberland Gap National Historical Park Boundary to Headwaters (1.5-5.5)	Bell	CAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Mouth to Cumberland Gap National Historical Park Boundary to Mouth (0.0-1.5)	Bell	WAH, PCR, SCR, OSRW	
Shut-in Branch of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Sinking Creek	Headwaters to Rockcastle River (0.0-20.3)	Laurel	WAH, PCR, SCR, OSRW	

Sims Fork of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Smith Creek of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
South Fork of Cumberland River	River Mile 44.3 (Blue Heron) to River Mile 54.8 (Kentucky /Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	River Mile 2.1 to White Oak Creek (River Mile 5.8)	Laurel	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	Rockcastle River (River Mile 0.0) to River Mile 2.1	Rockcastle	WAH, PCR, SCR, OSRW	
Stevenson Branch of Bennetts Fork of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Sulphur Creek of Wolf River of Obey River	Dale Hollow Reservoir Backwaters to Headwaters (1.7-5.1)	Clinton	WAH, PCR, SCR, OSRW	
Trace Branch of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Trammel Fork of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Tyes Fork of Bennetts Fork of Patterson Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Unidentified Tributary (across from Hemlock Grove) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.2)	McCreary	WAH, PCR, SCR, OSRW	
Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters (0.0-1.3)	McCreary	WAH, PCR, SCR, OSRW	
Watts Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Watts Creek of Cumberland River	Basin above Camp Blanton Lake (2.4)	Harlan	WAH, PCR, SCR, OSRW	
White Oak Creek of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
White Oak Creek of Sinking Creek	Basin above River Mile 0.9 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR	
Wood Creek of Little Rockcastle River	Confluence with Hazel Patch Creek (0.0) to River Mile 1.9 (Wood Creek Lake Dam)	Laurel	CAH, PCR, SCR	
Youngs Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR	
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR	
Laurel River	Entire Reservoir	Laurel/ Whitley	WAH, CAH, PCR, SCR	
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR	
TENNESSEE RIVER BASIN				
Blood River of Kentucky Lake (Tennessee River)	McCullough Fork to Tennessee State Line (15.15-18.7)	Calloway	WAH, PCR, SCR, OSRW	
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek (28.7-30.7)	Marshall	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters (0.7-2.9)	Calloway	WAH, PCR, SCR, OSRW	
Panther Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters (0.5-5.7)	Calloway	WAH, PCR, SCR, OSRW	
Soldier Creek of West Fork of Clarks River	Mouth to South Fork of Soldier Creek (0.0-5.7)	Marshall	WAH, PCR, SCR, OSRW	
Sugar Creek of Kentucky Lake (Tennessee River)	Kentucky Lake Backwaters to Buzzard Roost Road (2.5-3.2)	Calloway	WAH, PCR, SCR, OSRW	

Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir (0.0-3.9)	Graves	WAH, PCR, SCR, OSRW	
Tennessee River	River Mile 23.1 (Kentucky Lake Dam) to River Mile 12.4 (12.4-23.1)	Livingston/ McCracken/ Marshall	WAH, PCR, SCR, OSRW	
Trace Creek of West Fork of Clarks River	Mouth to Neeley Branch (0.0-3.35	Graves	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River	Mouth to Headwaters (0.0-1.7)	Graves	WAH, PCR, SCR, OSRW	
West Fork of Clarks River	Soldier Creek to Duncan Creek (20.1-235.)	Graves	WAH, PCR, SCR, OSRW	
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)	Ralph Wright Road Crossing to Headwaters 2.8-6.8)	Calloway	WAH, PCR, SCR, OSRW	
OHIO RIVER BASIN (Main Stem and Minor Tributaries)				
Crooked Creek	Rush Creek to City Lake Dam (18.1-26.4)	Crittenden	WAH, PCR, SCR, OSRW	
Doe Run Creek	Hwy 1638 to Headwaters (5.4-8.4)	Meade	CAH, PCR, SCR	
Double Lick Creek of Woolper Creek	Mouth to Headwaters (0.0-3.5)	Boone	WAH, PCR, SCR, OSRW	
Garrison Creek	Mouth to Headwaters (0.0-4.85)	Boone	WAH, PCR, SCR, OSRW	
Kinniconick Creek	McDowell Creek to Headwaters (5.2)-50.9)	Lewis	WAH, PCR, SCR, OSRW	
Little South Fork of Big South Fork	Land Use Change to Headwaters (1.2-5.9)	Boone	WAH, PCR, SCR, OSRW	
Middle Fork of Massac Creek	Hines Road to Headwaters (3.1-6.4)	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 848.0 to River Mile 850.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 859.0 to River Mile 861.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 865.0 to River Mile 867.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 923.5 to River Mile 926.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 927.0 to River Mile 930.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 940.7 to River Mile 943.3	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 948.2 to River Mile 949.5	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 960.0 to River Mile 962.7 (above Lock and Dam 53)	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
Otter Creek	Ohio River to River Mile 9.7	Meade	CAH, PCR, SCR	
Second Creek	Ohio River Backwaters to Headwaters (0.4-2.9)	Boone	WAH, PCR, SCR, OSRW	
Sinking Creek	Hwy 259 to Headwaters (includes Blue & Stony Forks)	Breckinridge	CAH, PCR, SCR	
Unidentified Tributary of Big Sugar Creek	I-71 to Headwaters (1.0-1.8)	Gallatin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Corn Creek	Mouth to Headwaters (0.0-2.3)	Trimble	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Massac Creek	Mouth to Headwaters (0.0-1.7)	McCracken	WAH, PCR, SCR, OSRW	
West Fork of Massac Creek	SR 725 to Little Massac Creek (1.0-6.2)	McCracken	WAH, PCR, SCR, OSRW	
White Oak Creek	Mouth (Ohio River) to River Mile 1.08	Greenup	SCR	401 KAR 10:031, Section 2(1)(d) and 2(2) do not apply.
Yellowbank Creek	Ohio River Backwaters to Headwaters (2.0-1[illegible]0)	Breckinridge	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				

Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, OSRW	
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)				
Bayou de Chien	River Mile 15.4 to Headwaters (River Mile 32.9)	Hickman/ Graves	WAH, PCR, SCR, OSRW	
Cane Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek of Bayou de Chein	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek	Mouth to Headwaters	Graves	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 935.0 to River Mile 930.0	Carlisle	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 947.0 to River Mile 945.0	Carlisle	WAH, PCR, SCR, OSRW	
Obion Creek	Hurricane Creek to Little Creek (26.7-37.1)	Hickman	WAH, PCR, SCR, OSRW	
Sand Creek of Bayou de Chein	Basin	Graves	WAH, PCR, SCR, OSRW	
South Fork of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Terrapin Creek	Tennessee State Line to Headwaters (2.7-6.0)	Graves	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR, OSRW	
Swan Pond	Entire Lake	Ballard	WAH, PCR, SCR, OSRW	

[~~Exceptions to specific criteria in 401 KAR 10:031~~][5:031] [~~that apply to particular surface waters are shown in Table C~~][~~the tables of surface water use designations~~][~~in this section. All other criteria in 401 KAR 10:031~~][5:031][~~applicable to the listed use designations shall apply to these surface waters~~

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~BIG SANDY RIVER BASIN~~				
~~Hobbs Fork of Pigeonroost Fork of Wolf Creek~~	~~Mouth to Headwaters~~	~~Martin~~	~~WAH, PCR, SCR, OSRW~~	
~~Lower Pigeon Branch of Elkhorn Creek~~	~~Left Fork to Headwaters~~	~~Pike~~	~~WAH, PCR, SCR, OSRW~~	
~~Paint Creek of Levisa Fork~~	~~River Mile 8.3 (Paintsville Lake Dam) to Levisa Fork~~	~~Johnson~~	~~CAH, PCR, SCR~~	
~~Paintsville~~	~~Entire reservoir~~	~~Johnson~~	~~WAH, CAH, PCR, SCR~~	
~~Russell Fork of Levisa Fork of Big Sandy River~~	~~Clinch Field RR Yard off HWY 80 to Virginia State Line~~	~~Pike~~	~~WAH, PCR, SCR, OSRW~~	
~~Toms Branch of Elkhorn Creek~~	~~Mouth to Headwaters~~	~~Pike~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Hobbs Fork~~	~~Hobbs Fork of Pigeonroost Fork to Headwaters~~	~~Martin~~	~~WAH, PCR, SCR, OSRW~~	
~~LITTLE SANDY RIVER BASIN~~				
~~Arabs Fork of Big Sinking Creek~~	~~Clay Fork to Headwaters~~	~~Elliott~~	~~WAH, PCR, SCR, OSRW~~	
~~Big Caney Creek~~	~~Source to Grayson Lake~~	~~Elliott/ owan~~	~~CAH, PCR, SCR, OSRW~~	
~~Big Sinking Creek of Little Sandy River~~	~~SR 986 to Clay Fork and Arab Fork~~	~~Carter/ Elliott~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Creek of Little Sandy River~~	~~Carter School Rd Bridge to Little Sandy River~~	~~Elliott/ Rowan~~	~~CAH, PCR, SCR,~~	
~~Laurel Creek of Little Sandy River~~	~~Carter School Rd Bridge to Headwaters~~	~~Elliott/ Rowan~~	~~CAH, PCR, SCR, OSRW~~	
~~Meadow Branch of Little Fork of Little Sandy River~~	~~Mouth to Headwaters~~	~~Elliott~~	~~WAH, PCR, SCR, OSRW~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~Middle Fork of Little Sandy River~~	~~Mouth to Sheepskin Branch~~	~~Elliott~~	~~WAH, PCR, SCR, OSRW~~	
~~Nichols Fork of Little Fork of Little Sandy River~~	~~Green Branch to Headwaters~~	~~Elliott~~	~~WAH, PCR, SCR, OSRW~~	
~~LAKES AND RESERVOIRS~~				
~~Greenbo~~	~~Entire Reservoir~~	~~Greenup~~	~~WAH, CAH, PCR, SCR~~	
~~LICKING RIVER BASIN~~				
~~Blackwater Creek of Licking River~~	~~Eaton Creek to Greasy Fork~~	~~Morgan~~	~~WAH, PCR, SCR, OSRW~~	
~~Blanket Creek of Licking River~~	~~Mouth to Unidentified Tributary~~	~~Pendleton~~	~~WAH, PCR, SCR, OSRW~~	
~~Botts Fork of Brushy Fork of Licking River~~	~~Mouth to Landuse Change~~	~~Menifee~~	~~WAH, PCR, SCR, OSRW~~	
~~Bowman Creek~~	~~Mouth to Unidentified Tributary~~	~~Kenton~~	~~WAH, PCR, SCR, OSRW~~	
~~Brushy Fork of Meyers Creek~~	~~Cave Run Lake Backwaters to Headwaters~~	~~Menifee~~	~~WAH, PCR, SCR, OSRW~~	
~~Brushy Fork of South Fork of Grassy Creek~~	~~Mouth to Headwaters~~	~~Pendleton~~	~~WAH, PCR, SCR, OSRW~~	
~~Bucket Branch of North Fork of Licking River~~	~~Mouth to Headwaters~~	~~Morgan~~	~~WAH, PCR, SCR, OSRW~~	
~~Cedar Creek of Licking River~~	~~Mouth to North Branch of Cedar Creek~~	~~Robertson~~	~~WAH, PCR, SCR, OSRW~~	
~~Craney Creek~~	~~Source to North Fork of Licking River~~	~~Rowan/ Morgan~~	~~CAH, PCR, SCR, OSRW~~	
~~Devils Fork of North Fork of Licking River~~	~~Mouth to Headwaters~~	~~Elliott/ Morgan~~	~~WAH, PCR, SCR, OSRW~~	
~~Flour Creek of Licking River~~	~~Mouth to Unidentified Tributary~~	~~Pendleton~~	~~WAH, PCR, SCR, OSRW~~	
~~Grovers Creek of Kincaid Creek~~	~~Kincaid Lake Backwaters to Unidentified Tributary~~	~~Bracken/ Pendleton~~	~~WAH, PCR, SCR, OSRW~~	
~~Licking River~~	~~River Mile 180.8 (Cave Run Lake Dam) to River Mile 175.6 (U.S. Highway 60 Bridge)~~	~~Bath/ Rowan~~	~~CAH, PCR, SCR~~	
~~Licking River~~	~~River Mile 170.6 (Unnamed Road off Slatey Point Road) to River Mile 159.4 (Hwy 211)~~	~~Bath/ Rowan/ Fleming~~	~~WAH, PCR, SCR, OSRW~~	
~~Licking River~~	~~River Mile 117.6 (1.3 river miles above Fishtrap Creek) to River Mile 19.3 (Hwy 536 Bridge)~~	~~Kenton/ Campbell/ Pendleton/ Harrison/ Robertson/ Fleming~~	~~WAH, PCR, SCR, OSRW~~	
~~Minor Creek of Craney Creek~~	~~Basin~~	~~Morgan/ Rowan~~	~~CAH, PCR, SCR~~	
~~North Fork of Licking River~~	~~Cave Run Lake Backwaters to Devils Fork~~	~~Morgan~~	~~WAH, PCR, SCR, OSRW~~	
~~Sawyers Fork of Cruises Creek~~	~~Mouth to Headwaters~~	~~Kenton~~	~~WAH, PCR, SCR, OSRW~~	
~~Slabcamp Creek of Craney Creek of Licking River~~	~~Mouth to Headwaters~~	~~Rowan~~	~~CAH, PCR, SCR, OSRW~~	
~~Slate Creek of Licking River~~	~~Mouth to Mill Creek~~	~~Bath~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork Grassy Creek of Grassy Creek of Licking River~~	~~Mouth to Greasy Creek~~	~~Kenton/ Pendleton~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Shannon Creek of North Fork of Licking River~~	~~Mouth to Headwaters~~	~~Mason~~	~~WAH, PCR, SCR, OSRW~~	
~~Welch Fork of Brushy Fork of Licking River~~	~~Mouth to First Road Crossing~~	~~Menifee~~	~~WAH, PCR, SCR, OSRW~~	
~~West Creek of Licking River~~	~~Mouth to Headwaters~~	~~Harrison/ Robertson~~	~~WAH, PCR, SCR, OSRW~~	
~~KENTUCKY RIVER BASIN~~				
~~Backbone Creek of Sixmile Creek of Kentucky River~~	~~Mouth to Scrabble Creek~~	~~Franklin/ Henry/ Shelby~~	~~WAH, PCR, SCR, OSRW~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~Bear Branch of North Fork of Kentucky River~~	~~Above Sediment Pond to Headwaters~~	~~Perry~~	~~WAH, PCR, SCR, OSRW~~	
~~Big Double Creek of Red Bird River~~	~~Mouth to Headwaters~~	~~Clay~~	~~WAH, PCR, SCR, OSRW~~	
~~Bill Branch of Laurel Fork of Greasy Creek~~	~~Mouth to Right Fork and Left Fork Creek~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Billey Fork of Millers Creek~~	~~Land Use Change to Headwaters~~	~~Lee/Elliott~~	~~WAH, PCR, SCR, OSRW~~	
~~Bill Oak Branch of Left Fork of Buffalo Creek~~	~~Mouth to Headwaters~~	~~Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~Buffalo Creek of South Fork of Kentucky River~~	~~Mouth to Right Fork and Left Fork~~	~~Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cavanaugh Creek~~	~~South Fork of Station Camp Creek to Foxtown Rd~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	
~~Cherry Run of Boyd Run of North Elkhorn Creek~~	~~Mouth to Boyd Run~~	~~Scott~~	~~WAH, PCR, SCR, OSRW~~	
~~Chester Creek of Middle Fork of Red River~~	~~Mouth to Headwaters~~	~~Wolfe~~	~~WAH, PCR, SCR, OSRW~~	
~~Chimney Top Creek of Red River~~	~~Basin~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Clear Creek of Kentucky River~~	~~Mouth to East Fork Clear Creek~~	~~Woodford~~	~~WAH, PCR, SCR, OSRW~~	
~~Clemons Fork of Buckhorn Creek~~	~~Mouth to Headwaters~~	~~Breathitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Coles Fork of Buckhorn Creek~~	~~Mouth to Headwaters~~	~~Breathitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Craig Creek of Kentucky River~~	~~Mouth to Unidentified Tributary~~	~~Woodford~~	~~WAH, PCR, SCR, OSRW~~	
~~Deep Ford Branch of Cutshin Creek~~	~~Above Pond to Headwaters~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Dix River~~	~~River Mile 3.1 (Herrington Lake Dam) to Kentucky River~~	~~Garrard/ Mercer~~	~~CAH, PCR, SCR~~	
~~Dog Fork of Swift Camp Creek~~	~~Basin~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Drennon Creek of Kentucky River~~	~~Fivemile Creek to Town Branch~~	~~Henry~~	~~WAH, PCR, SCR, OSRW~~	
~~East Fork of Indian Creek of Indian Creek~~	~~West Fork of Indian Creek to Indian Creek~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~East Fork of Indian Creek of Indian Creek of Red River River~~	~~West Fork of Indian Creek to Headwaters~~	~~Menifee~~	~~CAH, PCR, SCR, OSRW~~	
~~Elisha Creek of Red Bird River~~	~~Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Emily Run of Drennon Creek~~	~~Mouth to Unidentified Tributary~~	~~Henry~~	~~WAH, PCR, SCR, OSRW~~	
~~Evans Fork of Billey Fork of Millers Creek~~	~~Mouth to Headwaters~~	~~Estill~~	~~WAH, PCR, SCR, OSRW~~	
~~Falling Rock Branch of Clemons Fork of Buckhorn Creek~~	~~Mouth to Headwaters~~	~~Breathitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Gilberts Creek of Kentucky River~~	~~Mouth to Unidentified Tributary~~	~~Anderson~~	~~WAH, PCR, SCR, OSRW~~	
~~Gladie Creek of Red River~~	~~Basin~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~Gladie Creek of Red River~~	~~Land Use Change to Long Branch~~	~~Menifee~~	~~CAH, PCR, SCR, OSRW~~	
~~Goose Creek of South Fork of Kentucky River~~	~~Mouth to Laurel Creek~~	~~Clay/Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Griers Creek of Kentucky River~~	~~Kentucky River Backwaters to Unidentified Tributary~~	~~Woodford~~	~~WAH, PCR, SCR, OSRW~~	
~~Grindstone Creek of Kentucky River~~	~~Kentucky River Backwaters to Headwaters~~	~~Franklin~~	~~WAH, PCR, SCR, OSRW~~	
~~Hardwick Creek of Red River~~	~~Mouth to Little Hardwick Creek~~	~~Powell~~	~~WAH, PCR, SCR, OSRW~~	
~~Hell For Certain of Middle Fork of Red River~~	~~Mouth to Big Fork~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Hines Creek of Kentucky River~~	~~Kentucky River Backwaters to confluence with Unidentified Tributary~~	~~Madison~~	~~WAH, PCR, SCR, OSRW~~	
~~Honey Branch of Greasy Creek of Middle Fork of Kentucky River~~	~~Mouth to Headwaters~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Hopper Cave Branch of Cavanaugh Creek~~	~~Mouth to Headwaters~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~Indian Creek of Eagle Creek~~	~~Mouth to Headwaters~~	~~Carroll~~	~~WAH, PCR, SCR, OSRW~~	
~~Indian Creek of Red River~~	~~River Mile 5.2 (0.3 river miles below Bear Branch) to River Mile 1.2 (East Fork of Indian Creek)~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~Indian Fork of Sixmile Creek of Kentucky River~~	~~Mouth to Headwaters~~	~~Shelby~~	~~WAH, PCR, SCR, OSRW~~	
~~John Carpenter Fork of Clemons Fork of Buckhorn Creek~~	~~Mouth to Headwaters~~	~~Breathitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Katies Creek of Red Bird River~~	~~Mouth to Headwaters~~	~~Clay~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek~~	~~Cortland Fork to Big Branch~~	~~Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~Left Fork of Big Double Creek of Kentucky River~~	~~Mouth to Headwaters~~	~~Clay~~	~~WAH, PCR, SCR, OSRW~~	
~~Line Fork of North Fork of Kentucky River~~	~~Defeated Creek to Headwaters~~	~~Letcher~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Middle Fork of Elisha Creek of Red Bird River~~	~~Mouth to Headwaters~~	~~Clay~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Millseat Branch of Clemons Fork of Buckhorn Creek~~	~~Mouth to Headwaters~~	~~Breathitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Sixmile Creek of Sixmile Creek of Kentucky River~~	~~Mouth to Headwaters~~	~~Henry~~	~~WAH, PCR, SCR, OSRW~~	
~~Lower Howard Creek of Kentucky River~~	~~Mouth to West Fork~~	~~Clark~~	~~WAH, PCR, SCR, OSRW~~	
~~Lulbegrud Creek of Red River~~	~~Mouth to Falls Branch~~	~~Clark/ Powell~~	~~WAH, PCR, SCR, OSRW~~	
~~Middle Fork of Kentucky River~~	~~Mouth to Upper Twin Creek~~	~~Lee/ Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~Middle Fork of Kentucky River~~	~~Hurts Creek to Greasy Creek~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Middle Fork of Red River~~	~~Source to River Mile 10.7 (0.7 river miles below Sinking Fork)~~	~~Powell~~	~~CAH, PCR, SCR~~	
~~Middle Fork of Red River~~	~~South Fork of Red River to Natural Bridge State Park Lake~~	~~Powell~~	~~CAH, PCR, SCR, OSRW~~	
~~Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek~~	~~Mouth to Headwaters~~	~~Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~Mill Creek of Kentucky River~~	~~Upstream of Mouth to Headwaters~~	~~Owen~~	~~WAH, PCR, SCR, OSRW~~	
~~Millseat Branch of Clemons Fork of Buckhorn Creek~~	~~Mouth to Headwaters~~	~~Breathitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Muddy Creek of Kentucky River~~	~~Elliston, Kentucky to Viney Creek~~	~~Madison~~	~~WAH, PCR, SCR, OSRW~~	
~~Musselman Creek of Eagle Creek~~	~~Mouth to Headwaters~~	~~Grant~~	~~WAH, PCR, SCR, OSRW~~	
~~Parched Corn Creek~~	~~Source to Red River~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Red River~~	~~River Mile 70.4 (SR 746) to River Mile 50.3 (0.1 Miles below Auxier Branch)~~	~~Menifee/ Wolfe~~	~~WAH, PCR, SCR, OSRW~~	
~~Red Bird River of South Fork of Kentucky River~~	~~Mouth to Big Creek~~	~~Clay~~	~~WAH, PCR, SCR, OSRW~~	
~~Right Fork of Buffalo Creek of Kentucky River~~	~~Mouth to Headwaters~~	~~Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~Right Fork of Elisha Creek of Redbird River~~	~~Mouth to Headwaters~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Roaring Fork of Lewis Fork of Buckhorn Creek~~	~~Mouth to Headwaters~~	~~Breathitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Rock Lick Creek~~	~~Mouth to Headwaters~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	
~~Sand Ripple Creek of Kentucky River~~	~~Kentucky River Backwaters to Headwaters~~	~~Henry~~	~~WAH, PCR, SCR, OSRW~~	
~~Severn Creek of Kentucky River~~	~~Kentucky River Backwaters to North Fork of Severn Creek~~	~~Owen~~	~~WAH, PCR, SCR, OSRW~~	
~~Shaker Creek of Kentucky River~~	~~Near Mouth to Shawnee Run~~	~~Mercer~~	~~WAH, PCR, SCR, OSRW~~	
~~Shelly Rock Fork of Millseat Branch of Clemons Fork~~	~~Mouth to Headwaters~~	~~Breathitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Sixmile Creek of Kentucky River~~	~~Little Sixmile Creek to Dam~~	~~Henry~~	~~WAH, PCR, SCR, OSRW~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~South Fork of Kentucky River~~	~~Mouth to Sexton Creek~~	~~Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Red River~~	~~Mouth to Sandlick Fork~~	~~Powell~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Station Camp Creek of Kentucky River~~	~~Mouth to Rock Lick Creek~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	
~~Spruce Branch of Redbird River~~	~~Mouth to Headwaters~~	~~Clay~~	~~WAH, PCR, SCR, OSRW~~	
~~Station Camp Creek of Kentucky River~~	~~Landuse Change to South Fork of Station Camp Creek~~	~~Estill~~	~~WAH, PCR, SCR, OSRW~~	
~~Steeles Run of Elkhorn Creek~~	~~Mouth to Unidentified Tributary~~	~~Fayette~~	~~WAH, PCR, SCR, OSRW~~	
~~Steer Fork of War Fork of Station Camp Creek~~	~~Mouth to Headwaters~~	~~Jackson~~	~~CAH, PCR, SCR, OSRW~~	
~~Sturgeon Creek of Kentucky River~~	~~Duck Fork to Little Sturgeon Creek~~	~~Lee/ Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~Sugar Creek of Redbird River~~	~~Landuse Change to Headwaters~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Swift Camp Creek~~	~~Source to Red River~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Unidentified Tributary of Cawood Branch of Beech Fork~~	~~Mouth to Headwaters~~	~~Leslie~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Cedar Creek of Kentucky River~~	~~Mouth to Headwaters~~	~~Owen~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Glenns Creek of Kentucky River~~	~~Mouth to Headwaters~~	~~Woodford~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Jacks Creek of Kentucky River~~	~~Mouth to Headwaters~~	~~Madison~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Kentucky River~~	~~Land Use Change to Headwaters~~	~~Franklin~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)~~	~~Mouth to Headwaters~~	~~Letcher~~	~~WAH, PCR, SCR, OSRW~~	
~~Sulphur Creek of Elkhorn Creek~~	~~Mouth to Headwaters~~	~~Franklin~~	~~WAH, PCR, SCR, OSRW~~	
~~War Fork of Station Camp Creek~~	~~Mouth to Headwaters~~	~~Jackson~~	~~CAH, PCR, SCR, OSRW~~	
~~War Fork of Station Camp Creek~~	~~Basin above River Mile 1.9 (0.3 river miles below Wind Cave Branch~~	~~Jackson~~	~~CAH, PCR, SCR~~	
~~Watches Fork of Laurel Fork of Left Fork of Buffalo Creek~~	~~Mouth to Headwaters~~	~~Owsley~~	~~WAH, PCR, SCR, OSRW~~	
~~Wolfpen Creek of Red River~~	~~Mouth to Headwaters~~	~~Menifee~~	~~WAH, PCR, SCR, OSRW~~	
~~LAKES AND RESERVOIRS~~				
~~Bert Combs~~	~~Entire Reservoir~~	~~Clay~~	~~WAH, CAH, PCR, SCR~~	
~~Fishpond~~	~~Entire Reservoir~~	~~Letcher~~	~~WAH, CAH, PCR, SCR~~	
~~Mill Creek~~	~~Entire Reservoir~~	~~Wolfe~~	~~WAH, CAH, PCR, SCR~~	
~~SALT RIVER BASIN~~				
~~Brashears Creek of Salt River~~	~~Guist Creek to Bullskin and Clear Creek~~	~~Shelby/ Spencer~~	~~WAH, PCR, SCR, OSRW~~	
~~Cedar Creek of Salt River~~	~~Mouth to Greens Branch~~	~~Bullitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Chaplin River of Salt River~~	~~Thompson Creek to Cornishville, KY~~	~~Washington~~	~~WAH, PCR, SCR, OSRW~~	
~~Doctors Fork of Chaplin River~~	~~Mouth to Begley Branch~~	~~Boyle~~	~~WAH, PCR, SCR, OSRW~~	
~~Guist Creek of Brashears Creek~~	~~Mouth to Jeptha Creek~~	~~Spencer~~	~~WAH, PCR, SCR, OSRW~~	
~~Harts Run of Wilson Creek of Rolling Fork of Salt River~~	~~Mouth to Headwaters~~	~~Bullitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Indian Creek of Thompson Creek of Chaplin River of Salt River~~	~~Mouth to Unidentified Tributary~~	~~Mercer~~	~~WAH, PCR, SCR, OSRW~~	
~~Lick Creek of Long Lick Creek of Beech Fork of Salt River~~	~~Mouth to 0.1miles below Dam~~	~~Washington~~	~~WAH, PCR, SCR, OSRW~~	
~~Otter Creek of Rolling Fork of Salt~~	~~River Mile 9.7 to Ohio River~~	~~Larue~~	~~CAH, PCR, SCR,~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~River~~				
~~Otter Creek of Rolling Fork of Salt River~~	~~Landuse Change to confluence of East Fork and Middle Fork Otter Creek~~	~~Larue~~	~~CAH, PCR, SCR, OSRW~~	
~~Overalls Creek of Wilson Creek of Rolling Fork of Salt River~~	~~Mouth to Headwaters of Middle Fork of Overalls Creek~~	~~Bullitt~~	~~WAH, PCR, SCR, OSRW~~	
~~Rolling Fork of Salt River~~	~~River Mile 62.5 (0.5 mi downstream of Otter Cr) to River Mile 53.6 (0.8 mi upstream of Stiles Rd Bridge)~~	~~Larue/ Nelson~~	~~WAH, PCR, SCR, OSRW~~	
~~Salt Lick Creek of Rolling Fork of Salt River~~	~~Mouth to Headwaters~~	~~Larue, Marion~~	~~WAH, PCR, SCR, OSRW~~	
~~Sulphur Creek of Chaplin River~~	~~Mouth to confluence of Cheese Lick and Brush Creek~~	~~Anderson/ Mercer/ Washington~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Glens Creek of Chaplin River~~	~~Mouth to Headwaters~~	~~Washington~~	~~WAH, PCR, SCR, OSRW~~	
~~West Fork of Otter Creek of Rolling Fork of Salt River~~	~~Mouth to Headwaters~~	~~Larue~~	~~WAH, PCR, SCR, OSRW~~	
~~Wilson Creek of Rolling Fork of Salt River~~	~~Mouth to Headwaters~~	~~Bullitt/ Nelson~~	~~WAH, PCR, SCR, OSRW~~	
~~GREEN RIVER BASIN~~				
~~Barren River~~	~~River Mile 15.1 (Lock and Dam #1) to Green River~~	~~Butler/ Warren~~	~~WAH, PCR, SCR, OSRW~~	
~~Beaverdam Creek~~	~~Source to Green River~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Cane Run of Nolin River~~	~~Nolin River Lake Backwaters to Headwaters~~	~~Hart~~	~~WAH, PCR, SCR, OSRW~~	
~~Caney Fork of Peter Creek~~	~~Mouth to Headwaters~~	~~Barren~~	~~WAH, PCR, SCR, OSRW~~	
~~Clifty Creek of Rough River~~	~~Barton Run to Western Kentucky Parkway~~	~~Grayson~~	~~WAH, PCR, SCR, OSRW~~	
~~Clifty Creek of Wolf Lick Creek~~	~~Little Clifty Creek to Sulphur Lick~~	~~Todd~~	~~WAH, PCR, SCR, OSRW~~	
~~Double Sink Spring~~	~~Basin Outside Mammoth Cave ational Park Boundary~~	~~Edmonson/ Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~East Fork of Little Barren River~~	~~Red Lick Creek to Flat Creek~~	~~Metcalfe~~	~~WAH, PCR, SCR, OSRW~~	
~~Echo River~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Ellis Fork of Damron Creek~~	~~Mouth to Headwaters~~	~~Adair/ Russell~~	~~WAH, PCR, SCR, OSRW~~	
~~Falling Timber Creek of Skaggs Creek~~	~~Landuse Change to Headwaters~~	~~Barren/ Metcalfe~~	~~WAH, PCR, SCR, OSRW~~	
~~Fiddlers Creek of North Fork of Rough River~~	~~Mouth to Headwaters~~	~~Breckinridge~~	~~WAH, PCR, SCR, OSRW~~	
~~Forbes Creek of Buck Creek of East Fork of Pond River~~	~~Mouth to Unidentified Tributary~~	~~Christian~~	~~WAH, PCR, SCR, OSRW~~	
~~Ganter Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Gasper River of Barren River~~	~~Clear Fork to Wiggington Creek~~	~~Logan/ Warren~~	~~WAH, PCR, SCR, OSRW~~	
~~Goose Creek of Green River~~	~~Mouth to Little Goose Creek~~	~~Casey/ Russell~~	~~WAH, PCR, SCR, OSRW~~	
~~Green River~~	~~River Mile 309.1 (Green River Lake Dam) to River Mile 210.55 (eastern Mammoth Cave National Park Boundary)~~	~~Hart/Taylor/ Green~~	~~WAH, PCR, SCR, OSRW~~	
~~Green River~~	~~River Mile 210.55 (eastern Mammoth Cave National Park Boundary) to River Mile 185.0 (western Mammoth Cave National Park Boundary)~~	~~Edmonson/ Hart~~	~~WAH, PCR, SCR, OSRW~~	
~~Green River~~	~~Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek~~	~~Edmonson/ Hart~~	~~WAH, PCR, SCR, OSRW~~	
~~Green River~~	~~River Mile 170.2 (Lock and Dam #5) to River Mile 149.6 (1.0 river miles below Lock and Dam #4)~~	~~Butler/ Warren~~	~~WAH, PCR, SCR, OSRW~~	
~~Halls Creek of Rough River~~	~~Unidentified Tributary to Headwaters~~	~~Ohio~~	~~WAH, PCR, SCR, OSRW~~	
~~Lick Creek of West Fork of Drakes Creek~~	~~Mouth to Headwaters~~	~~Simpson~~	~~CAH, PCR, SCR, OSRW~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toS-pecific Criteria~~
~~Linders Creek of Rough River~~	~~Mouth to Sutzer Creek~~	~~Hardin~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Beaverdam Creek of Green River~~	~~Mouth to SR 743~~	~~Edmonson/ Warren~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Short Creek of Rough River~~	~~Mouth to Headwaters~~	~~Grayson~~	~~WAH, PCR, SCR, OSRW~~	
~~Lynn Camp Creek~~	~~Source to Green River~~	~~Hart~~	~~CAH, PCR, SCR~~	
~~Lynn Camp Creek of Green River~~	~~Mouth to Lindy Creek~~	~~Hart~~	~~CAH, PCR, SCR, OSRW~~	
~~McFarland Creek of West Fork of Pond River~~	~~Grays Branch to Unidentified Tributary~~	~~Christian~~	~~WAH, PCR, SCR, OSRW~~	
~~McCoy Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart~~	~~CAH, PCR, SCR, OSRW~~	
~~Meeting Creek of Rough River~~	~~Little Meeting Creek to Petty Branch~~	~~Grayson/ Hardin~~	~~WAH, PCR, SCR, OSRW~~	
~~Mile 205.7 Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart~~	~~CAH, PCR, SCR, OSRW~~	
~~Muddy Creek of Caney Creek of Rough River~~	~~Landuse Change to Headwaters~~	~~Ohio~~	~~WAH, PCR, SCR, OSRW~~	
~~Nolin River~~	~~River Mile 7.8 (Nolin Lake Dam) to Green River~~	~~Edmonson~~	~~CAH,WAH, PCR, SCR~~	
~~North Fork of Rough River~~	~~Buffalo Creek to Reservoir Dam~~	~~Brecki-nridge~~	~~WAH, PCR, SCR, OSRW~~	
~~Peter Creek of Barren River~~	~~Caney Fork to Dry Fork~~	~~Barren~~	~~WAH, PCR, SCR, OSRW~~	
~~Pike Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Pond Run of Rough River~~	~~Landuse Change to Headwaters~~	~~Brecki-nridge/Ohio~~	~~WAH, PCR, SCR, OSRW~~	
~~Rough River~~	~~Linders Creek to Vertrees Creek~~	~~Hardin~~	~~WAH, PCR, SCR, OSRW~~	
~~Rough River~~	~~River Mile 90.4 (Rough River Lake Dam) to River Mile 89.6~~	~~Ohio/ Gray-son~~	~~CAH,WAH, PCR, SCR~~	
~~Rough River~~	~~River Mile 74.8 (Hwy 54 Bridge) to River Mile 74.2~~	~~McLean/ Ohio~~	~~CAH, PCR, SCR~~	
~~Roundstone Creek of Nolin River~~	~~Source to Hwy 1140 (River Mile 3.8~~	~~Hart~~	~~CAH, PCR, SCR~~	
~~Running Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Russell Creek of Green River~~	~~Mouth to Columbia WWTP~~	~~Green/ Adair~~	~~WAH, PCR, SCR, OSRW~~	
~~Russell Creek of Green River~~	~~Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek~~	~~Adair, Rus-sell~~	~~WAH, PCR, SCR, OSRW~~	
~~Sixes Creek of Indian Camp Creek~~	~~Wild Branch to Headwaters~~	~~Ohio~~	~~WAH, PCR, SCR, OSRW~~	
~~Suds Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart/ Bar-ren~~	~~CAH, PCR, SCR, OSRW~~	
~~Sulphur Branch of Alexander Creek~~	~~Mouth to Headwaters~~	~~Edmonson~~	~~WAH, PCR, SCR, OSRW~~	
~~Thompson Branch~~	~~Webb Branch to Tennessee State Line~~	~~Simpson~~	~~WAH, PCR, SCR, OSRW~~	
~~Trammel Fork of West Fork of Drakes Creek~~	~~River Mile 30.6 (Kentucky/Tennessee State Line) to Hwy 31E (River Mile 23.8)~~	~~Allen~~	~~CAH, PCR, SCR,~~	
~~Trammel Fork of West Fork of Drakes Creek~~	~~Mouth to Tennessee State Line~~	~~Allen/ Warren~~	~~CAH, PCR, SCR, OSRW~~	
~~Turnhole Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson/ arren~~	~~CAH, PCR, SCR, OSRW~~	
~~Underground River System~~	~~Mammoth Cave National Park~~	~~Edmonson/ Hart/Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Green River~~	~~Landuse Change to Headwaters~~	~~Adair~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of White Oak Creek~~	~~Hovious Rd Crossing to SR 76~~	~~Adair~~	~~WAH, PCR, SCR, OSRW~~	
~~West Fork of Pond River~~	~~Unidentified Tributary to East Branch of Pond River~~	~~Christian~~	~~WAH, PCR, SCR, OSRW~~	
~~TRADEWATER RIVER BASIN~~				
~~East Fork of Flynn Fork of Trade-water River~~	~~Landuse Change to Headwaters~~	~~Caldwell~~	~~WAH, PCR, SCR, OSRW~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~Piney Creek of Tradewater River~~	~~Lake Beshear Backwaters to Headwaters~~	~~Caldwell, Christian~~	~~WAH, PCR, SCR, OSRW~~	
~~Sandlick Creek of Tradewater River~~	~~Camp Creek to Headwaters~~	~~Christian~~	~~WAH, PCR, SCR, OSRW~~	
~~Tradewater River~~	~~Dripping Springs Branch to Buntin Lake Dam~~	~~Christian~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Piney Creek of Tradewater River~~	~~Mouth to Headwaters~~	~~Caldwell~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Sandlick Creek of Tradewater River~~	~~Mouth to Headwaters~~	~~Christian~~	~~WAH, PCR, SCR, OSRW~~	
~~LOWER CUMBERLAND RIVER BASIN~~				
~~Casey Creek~~	~~Source to Little River~~	~~Trigg~~	~~CAH, PCR, SCR~~	
~~Crooked Creek of Cumberland River~~	~~Energy Lake Backwaters to Headwaters~~	~~Trigg~~	~~WAH, PCR, SCR, OSRW~~	
~~Donaldson Creek of Cumberland River~~	~~Craig Branch to Unidentified Tributary~~	~~Trigg~~	~~WAH, PCR, SCR, OSRW~~	
~~Elk Creek of Red River of Cumberland River~~	~~Tennessee State Line to Dry Branch~~	~~Todd~~	~~WAH, PCR, SCR, OSRW~~	
~~Skinframe Creek~~	~~Source to Livingston Creek~~	~~Lyon~~	~~CAH, PCR, SCR~~	
~~Sugar Creek of Cumberland River~~	~~Lick Creek to Unidentified Tributary~~	~~Livingston~~	~~WAH, PCR, SCR, OSRW~~	
~~Sulphur Spring Creek~~	~~Source to Red River~~	~~Simpson~~	~~CAH, PCR, SCR~~	
~~West Fork of Red River~~	~~River Mile 32.2 to Kentucky/Tennessee State Line (River Mile 14.5)~~	~~Christian~~	~~CAH, PCR, SCR, OSRW~~	
~~Whipporwill Creek~~	~~Source to Red River~~	~~Logan/Todd~~	~~WAH, PCR, SCR, OSRW~~	
~~UPPER CUMBERLAND RIVER BASIN~~				
~~Acorn Fork of Stinking Creek~~	~~Basin above River Mile 1.0~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Adams Branch of Pigeon Roost Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Archers Creek of Cumberland River~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bad Branch of Poor Fork of Cumberland River~~	~~Basin~~	~~Letcher~~	~~CAH, PCR, SCR, OSRW~~	
~~Bark Camp Creek of Cumberland River~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR, OSRW~~	
~~Barren Fork of Indian Creek~~	~~Basin~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Beaver Creek of Cumberland River~~	~~Basin~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Bee Lick Creek of Brushy Creek of Buck Creek~~	~~Mouth to Warren Branch~~	~~Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Bens Fork of Little Clear Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Big Branch of Marsh Creek~~	~~Basin above River Mile 0.8~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Big Lick Branch of Cumberland River~~	~~Basin~~	~~Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Blacksnake Branch of Brownies Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Breedens Creek of Clover Fork of Cumberland River~~	~~Basin~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~Brices Creek of Road Fork of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Brownies Creek of Cumberland River~~	~~Basin above Blacksnake Branch~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~Brush Creek of Roundstone Creek~~	~~Wolf Creek to Reemergence of Sinking Creek~~	~~Rockcastle~~	~~WAH, PCR, SCR, OSRW~~	
~~Brushy Creek of Buck Creek~~	~~Mouth to Headwaters~~	~~Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Buck Creek of Cumberland River~~	~~0.8 river mile upstream of confluence of Hurricane Creek to River Mile 11.7 (Backwaters of Lake Cumberland)~~	~~Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Buck Creek of Clear Fork of Cumberland River~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bucks Branch of Jellico Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR,~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
			~~OSRW~~	
~~Buffalo Creek of Laurel Fork of Clear Fork of Cumberland River~~	~~Basin above Kentucky/ Tennessee State Line (River Mile 2.0)~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bunches Creek of Cumberland River~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR, OSRW~~	
~~Campbell Branch of Jellico Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cane Creek of Rockcastle River~~	~~Mouth to Headwaters~~	~~Laurel~~	~~WAH, PCR, SCR, OSRW~~	
~~Caney Creek of Left Fork of Straight Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Cannon Creek of Yellow Creek~~	~~Basin above Cannon Creek Lake~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Clifty Creek of Brushy Creek of Buck Creek~~	~~Mouth to Rocky Branch~~	~~Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Clover Bottom Creek~~	~~River Mile 1.4 to Horselick Creek~~	~~Jackson~~	~~CAH, PCR, SCR~~	
~~Cogur Fork of Indian Creek~~	~~Basin~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Coles Branch of Road Fork of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Colliers Creek of Poor Fork of Cumberland River~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Criscillis Branch of Jellico Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cumberland River~~	~~River Mile 574.6 (Summer Shoals) to River Mile 558.7 (Headwaters of Lake Cumberland)~~	~~McCreary/ Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cumberland River~~	~~River Mile 460.9 (Lake Cumberland Dam) to Kentucky/Tennessee State Line (River Mile 385.5)~~	~~Clinton, Cumberland, Russell, Monroe~~	~~CAH, PCR, SCR~~	
~~Davis Branch of Little Yellow Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Dog Slaughter Creek of Cumberland River~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR, OSRW~~	
~~Dolen Branch of Rock Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Eagle Creek of Cumberland River~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~FishTrap Branch~~	~~Basin above River Mile 0.3 (Lake Cumberland backwaters)~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Four Mile Creek of Cumberland River~~	~~Basin above River Mile 2.5~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Four Mile Run of Bennetts Fork of Yellow Creek Bypass~~	~~Basin above River Mile 1.0~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Fugitt Creek of Clover Fork of Cumberland River~~	~~Basin~~	~~Harlan~~	~~CAH, PCR, SCR, OSRW~~	
~~Hale Fork of Road Fork of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Hawk Creek of Rockcastle River~~	~~Basin~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Hinkle Branch of Road Fork of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Honeycutt Branch of Turkey Creek of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Horse Lick Creek~~	~~River Mile 12.3 (Clover Bottom Creek) to Middle Fork of Rockcastle River~~	~~Jackson/ Rockcastle~~	~~WAH, PCR, SCR, OSRW~~	
~~Howards Creek of Illwill Creek of Wolf River~~	~~Dale Hollow Reservoir Backwaters to Headwaters~~	~~Clinton~~	~~WAH, PCR, SCR, OSRW~~	
~~Hunting Shirt Branch of Richland Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Indian Creek of Cumberland River~~	~~Laurel Fork to Barren Fork~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Indian Creek of Cumberland River~~	~~Basin above and including Barren Fork~~	~~McCreary~~	~~CAH, PCR, SCR,~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
			~~OSRW~~	
~~Jackie Branch of Bark Camp Creek~~	~~Mouth to Headwaters~~	~~Whitley~~	~~CAH, PCR, SCR, OSRW~~	
~~Jellico Creek of Cumberland River~~	~~River Mile 22.5 (confluence with Capuchin Creek) to River Mile 25.3 (Kentucky/Tennessee State Line)~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Jennys Branch of Laurel Fork of Marsh Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Kelly Branch of Clover Fork of Cumberland River~~	~~Basin~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~Kennedy Creek of Little South Fork of Cumberland River~~	~~River Mile 1.0 to Little South Fork of Cumberland River~~	~~Wayne~~	~~WAH, PCR, SCR, OSRW~~	
~~Kilburn Fork of Indian Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Creek of Marsh Creek~~	~~River Mile 9.1 to River Mile 3.1 (Jennys Branch)~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Clear Fork of Cumberland River~~	~~Basin above River Mile 16.0 (John Partin Road off Hwy 190)~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Clear Fork of Cumberland River~~	~~River Mile 16.0 (John Partin Road off Hwy190) to River Mile 4.25 (Kentucky/Tennessee State Line)~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Indian Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Middle Fork Rockcastle River~~	~~Source to Middle Fork of Rockcastle River~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel River~~	~~Laurel River Lake Dam (River Mile 2.1) to River Mile 0.9~~	~~Laurel, Whitley~~	~~CAH, PCR, SCR~~	
~~Lick Fork of Bennetts Fork of Yellow Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Popular Creek of Cumberland River~~	~~Basin above Hubbs Creek~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Little South Fork of Cumberland River~~	~~River Mile 35.6 (Confluence with Langham Branch) to RiverMile 4.4 (backwaters of Lake Cumberland)~~	~~Wayne, McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Long Branch of Left Fork of Straight Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Looney Creek of Poor Fork of Cumberland River~~	~~Basin above River Mile 5.3 (Lynch City Limits)~~	~~Harlan~~	~~CAH, PCR, SCR~~	
~~Marsh Creek~~	~~Basin above River Mile 24.6 (Confluence with Murphy Creek) (within Kentucky)~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Marsh Creek~~	~~River Mile 24.0 (Confluence with Murphy Creek) to confluence with Cumberland River~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Martins Fork~~	~~Basin above River Mile 34.5 (Cumberland Gap National Historical Park Boundary)~~	~~Bell~~	~~CAH, PCR, SCR~~	
~~Martins Fork~~	~~River Mile 31.4 (Cumberland Gap National Historical Park Boundary) to River Mile 27.2~~	~~Bell, Harlan~~	~~CAH, PCR, SCR, OSRW~~	
~~McFarland Creek of Cumberland River~~	~~Little McFarland Creek to Spring Branch~~	~~Monroe~~	~~WAH, PCR, SCR, OSRW~~	
~~Meadow Fork of Franks Creek~~	~~Basin~~	~~Letcher~~	~~WAH, PCR, SCR, OSRW~~	
~~Meshack Creek of Cumberland River~~	~~Mouth to Pitcock Branch~~	~~Monroe~~	~~WAH, PCR, SCR, OSRW~~	
~~Middle Fork of Rockcastle River~~	~~River Mile 7.9 (confluence of Indian Creek and Laurel Fork) to confluence of the Middle Fork and South Fork of Rockcastle River)~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	
~~Mill Branch of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Mill Creek of Straight Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Mill Creek of Cumberland River~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Moores Creek of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Mud Creek of Clear Fork of Cumberland River~~	~~Basin above River Mile 6.5 (0.3 river miles above Siler Cemetery Road Bridge)~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Mud Camp Creek of Cumberland~~	~~Mouth to Collins Branch~~	~~Cumber-~~	~~WAH, PCR, SCR,~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~River~~		~~land~~	~~OSRW~~	
~~Mud Camp Creek of Cumberland River~~	~~Unidentified Tributary to Headwaters~~	~~Cumberland/ Monroe~~	~~WAH, PCR, SCR, OSRW~~	
~~Mud Lick of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Ned Branch of Rockcastle River~~	~~Basin~~	~~Laurel~~	~~WAH, PCR, SCR, OSRW~~	
~~Otter Creek of Cumberland River~~	~~Lake Cumberland Backwaters to Carpenter Fork~~	~~Wayne~~	~~WAH, PCR, SCR, OSRW~~	
~~Patterson Creek of Cumberland River~~	~~Basin above River Mile 7.3 (confluence with Rose Creek)~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Poor Fork of Cumberland River~~	~~Franks Creek to River Mile 48.1 (at Joseph Road off of Hwy 932)~~	~~Letcher~~	~~WAH, PCR, SCR, OSRW~~	
~~Poor Fork of Cumberland River~~	~~Basin above River Mile 48.1 (at Joseph Road off of Hwy 932)~~	~~Letcher~~	~~CAH, PCR, SCR, OSRW~~	
~~Presley House Branch of Poor Fork of Cumberland River~~	~~Mouth to Headwaters~~	~~Letcher~~	~~WAH, PCR, SCR, OSRW~~	
~~Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River~~	~~Mouth to Headwaters~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Richland Creek of Cumberland River~~	~~Basin above River Mile 15.8 (0.5 stream miles above Hubbard Branch)~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Roaring Fork of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Rock Creek of Little South Fork of Cumberland River~~	~~Kentucky/Tennessee State Line (River Mile 21.5) to White Oak Creek~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Rock Creek of Jellico Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Rockcastle River~~	~~River Mile 49.8 (confluence of Middle Fork and South Fork Rockcastle River) to River Mile 8.5 (backwaters of Lake Cumberland)~~	~~Laurel/ Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Ross Branch of Jellico Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Roundstone Creek of Rockcastle River~~	~~River Mile 26.3 (Interstate I-75) to River Mile 13.4 (confluence of Renfro Creek)~~	~~Rockcastle~~	~~WAH, PCR, SCR, OSRW~~	
~~Ryans Creek of Jellico Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Sanders Creek of Cumberland River~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Shillalah Creek of Clear Fork of Yellow Creek~~	~~Source to Cumberland Gap National Historical Park Boundary~~	~~Bell~~	~~CAH, PCR, SCR, OSRW~~	
~~Shillalah Creek of Clear Fork of Yellow Creek~~	~~Cumberland Gap National Historical Park Boundary to Mouth~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Shut-in Branch of Jellico Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Sinking Creek~~	~~Source to Rockcastle River~~	~~Laurel~~	~~WAH, PCR, SCR, OSRW~~	
~~Sims Fork of Left Fork of Straight Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Smith Creek of Franks Creek~~	~~Basin~~	~~Letcher~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Cumberland River~~	~~River Mile 54.1 (Kentucky /Tennessee State Line) to River Mile 45.7 (Blue Heron)~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Rockcastle River~~	~~River Mile 2.1 to White Oak Creek~~	~~Laurel~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Rockcastle River~~	~~River Mile 2.1 to Rockcastle River~~	~~Rockcastle~~	~~WAH, PCR, SCR, OSRW~~	
~~Stevenson Branch of Bennetts Fork of Yellow Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Sulphur Creek of Wolf River of Obey River~~	~~Dale Hollow Reservoir Backwaters to Headwaters~~	~~Clinton~~	~~WAH, PCR, SCR, OSRW~~	
~~Trace Branch of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Trammel Fork of Marsh Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toS-pecific Criteria~~
~~Turkey Creek of Stinking Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Tyes Fork of Bennetts Fork of Patterson Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary (across from Hemlock Grove) of Rock Creek of South Fork of Cumberland River~~	~~Mouth to Headwaters~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of South Fork of Cumberland River~~	~~Mouth to Headwaters~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Watts Branch of Rock Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Watts Creek of Cumberland River~~	~~Basin above Camp Blanton Lake~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~White Oak Creek of Rock Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~White Oak Creek of Sinking Creek~~	~~Basin above River Mile 1.2 (includes Little White Oak Creek)~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Wood Creek of Rockcastle River~~	~~River Mile 4.0 (Wood Creek Lake Dam) to Hazel Patch Creek~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Youngs Creek of Cumberland River~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~LAKES AND RESERVOIRS~~				
~~Beulah (=Tyner)~~	~~Entire Reservoir~~	~~Jackson~~	~~WAH, CAH, PCR, SCR~~	
~~Cannon Creek~~	~~Entire Reservoir~~	~~Bell~~	~~WAH, CAH, PCR, SCR~~	
~~Laurel River~~	~~Entire Reservoir~~	~~Laurel/ Whitley~~	~~WAH, CAH, PCR, SCR~~	
~~Wood Creek~~	~~Entire Reservoir~~	~~Laurel~~	~~WAH, CAH, PCR, SCR~~	
~~TENNESSEE RIVER BASIN~~				
~~Blood River of Kentucky Lake (Tennessee River)~~	~~McCullough Fork to Tennessee State Line~~	~~Calloway~~	~~WAH, PCR, SCR, OSRW~~	
~~Clarks River of Tennessee River~~	~~Persimmon Slough to Middle Fork Creek~~	~~Marshall~~	~~WAH, PCR, SCR, OSRW~~	
~~Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)~~	~~Kentucky Lake Backwaters to Headwaters~~	~~Calloway~~	~~WAH, PCR, SCR, OSRW~~	
~~Panther Creek of Kentucky Lake (Blood River of Tennessee River)~~	~~Kentucky Lake Backwaters to Headwaters~~	~~Calloway~~	~~WAH, PCR, SCR, OSRW~~	
~~Soldier Creek of West Fork of Clarks River~~	~~Mouth to South Fork of Soldier Creek~~	~~Marshall~~	~~WAH, PCR, SCR, OSRW~~	
~~Sugar Creek of Kentucky Lake (Tennessee River)~~	~~Kentucky Lake Backwaters to Buzzard Roost Road~~	~~Calloway~~	~~WAH, PCR, SCR, OSRW~~	
~~Sugar Creek of West Fork Clarks River~~	~~Mouth to Unnamed Reservoir~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Tennessee River~~	~~River Mile 23.1 (Kentucky Lake Dam) to River Mile 12.4~~	~~Livingston/ McCracken/ Marshall~~	~~WAH, PCR, SCR, OSRW~~	
~~Trace Creek of West Fork of Clarks River~~	~~Mouth to Neeley Branch~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Unidentified Tributary of Panther Creek of West Fork of Clarks River~~	~~Mouth to Headwaters~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~West Fork of Clarks River~~	~~Soldier Creek to Duncan Creek~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)~~	~~Ralph Wright Road Crossing to Headwaters~~	~~Calloway~~	~~WAH, PCR, SCR, OSRW~~	
~~OHIO RIVER BASIN (Main Stem and Minor Tributaries)~~				
~~Crooked Creek~~	~~Rush Creek to City Lake Dam~~	~~Crittenden~~	~~WAH, PCR, SCR, OSRW~~	
~~Doe Run Creek~~	~~Source to Hwy 1628 (River Mile 5.35)~~	~~Meade~~	~~CAH, PCR, SCR~~	
~~Double Lick Creek of Woolper Creek~~	~~Mouth to Headwaters~~	~~Boone~~	~~WAH, PCR, SCR, OSRW~~	
~~Garrison Creek~~	~~Mouth to Headwaters~~	~~Boone~~	~~WAH, PCR, SCR, OSRW~~	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toSpecific Criteria
Kinniconick Creek	McDowell Creek to Headwaters	Lewis	WAH, PCR, SCR, OSRW	
Little South Fork of Big South Fork	Land Use Change to Headwaters	Boone	WAH, PCR, SCR, OSRW	
Middle Fork of Massac Creek	Hines Road to Headwaters	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 848.0 to River Mile 850.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 859.0 to River Mile 861.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 865.0 to River Mile 867.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 923.5 to River Mile 926.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 927.0 to River Mile 930.0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 940.7 to River Mile 943.3	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 948.2 to River Mile 949.5	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 960.0 to River Mile 962.7 (above Lock and Dam 53)	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
Otter Creek	River Mile 9.7 to Ohio River	Meade	CAH, PCR, SCR	
Paddy's Run	Source to Ohio River	Jefferson	PCR, SCR	401 KAR 5:031, Section 2(1)(d) and 2(2) do not apply.
Second Creek	Ohio River Backwaters to Headwaters	Boone	WAH, PCR, SCR, OSRW	
Sinking Creek	Source to Hwy 259 (River Mile 3.8)	Breckinridge	CAH, PCR, SCR	
Unidentified Tributary of Big Sugar Creek	I-71 to Headwaters	Gallatin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of (Blue) Spring Ditch	Mouth to Headwaters	Jefferson	MWAH	
Unidentified Tributary of Corn Creek	Mouth to Headwaters	Trimble	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Massac Creek	Mouth to Headwaters	McCracken	WAH, PCR, SCR, OSRW	
West Fork of Massac Creek	SR 725 to Little Massac Creek	McCracken	WAH, PCR, SCR, OSRW	
White Oak Creek	River Mile 1.08 to Ohio River	Greenup	SCR	401 KAR 5:031, Section 2(1)(d) and 2(2) do not apply.
Yellowbank Creek	Ohio River Backwaters to Headwaters	Breckinridge	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, OSRW	
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)				
Bayou de Chien	Source to River Mile 15.4	Hickman/ Graves	WAH, PCR, SCR, OSRW	
Cane Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek of Bayou de Chein	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek	Mouth to Headwaters	Graves	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 935.0 to River Mile 930.0	Carlisle	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 947.0 to River Mile 945.0	Carlisle	WAH, PCR, SCR, OSRW	

~~Table C: SURFACE WATER USE DESIGNATIONS~~				
~~Stream~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions toSpecific Criteria~~
~~Obion Creek~~	~~Hurricane Creek to Little Creek~~	~~Hickman~~	~~WAH, PCR, SCR, OSRW~~	
~~Sand Creek of Bayou de Chein~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Bayou de Chien~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Terrapin Creek~~	~~Tennessee State Line to Headwaters~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~LAKES AND RESERVOIRS~~				
~~Murphy's Pond~~	~~Entire Pond and Preserve Area~~	~~Hickman~~	~~WAH, PCR, SCR, OSRW~~	
~~Swan Pond~~	~~Entire Lake~~	~~Ballard~~	~~WAH, PCR, SCR, OSRW~~	

~~[SURFACE WATER USE DESIGNATIONS~~				
~~Water Body~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions To Specific Criteria~~
~~BIG SANDY RIVER BASIN~~				
~~Big Sandy River~~	~~River Mile 26.8 to Ohio River~~	~~Boyd~~	~~WAH, PCR, SCR~~	
~~Hood Creek~~	~~Source to Wheeler Branch~~	~~Lawrence~~	~~WAH, PCR, SCR~~	
~~Levisa Fork of Big Sandy River~~	~~Kentucky-Virginia State Line to River Mile 147.5 (Headwaters of Fishtrap Lake)~~	~~Pike~~	~~WAH, PCR, SCR, DWS~~	
~~Levisa Fork of Big Sandy River~~	~~River Mile 126.6 (Fishtrap Lake Dam) to Big Sandy River~~	~~Lawrence~~	~~WAH, PCR, SCR, DWS~~	
~~Paint Creek of Levisa Fork~~	~~River Mile 8.3 (Paintsville Lake Dam) to Levisa Fork~~	~~Johnson~~	~~CAH, PCR, SCR~~	
~~Russell Fork of Big Sandy River~~	~~Kentucky-Virginia State Line (River Mile 15.9) to Levisa Fork~~	~~Pike~~	~~WAH, PCR, SCR, DWS~~	
~~Tug Fork of Big Sandy River~~	~~Kentucky-Virginia State Line (River Mile 94.0) to Big Sandy River~~	~~Lawrence~~	~~WAH, PCR, SCR, DWS~~	
~~LAKES AND RESERVOIRS~~				
~~Dewey~~	~~Entire reservoir~~	~~Floyd~~	~~WAH, PCR, SCR, DWS~~	
~~Fishtrap~~	~~Entire reservoir~~	~~Pike~~	~~WAH, PCR, SCR, DWS~~	
~~Paintsville~~	~~Entire reservoir~~	~~Johnson~~	~~WAH, CAH, PCR, SCR~~	
~~LITTLE SANDY RIVER BASIN~~				
~~Big Caney Creek~~	~~Source to Grayson Lake~~	~~Elliott~~	~~CAH, PCR, SCR~~	
~~Big Sinking Creek~~	~~River Mile 6.0 to Little Sandy River~~	~~Carter~~	~~WAH, PCR, SCR~~	
~~Laurel Creek~~	~~Source to Little Sandy River~~	~~Elliott~~	~~CAH, PCR, SCR~~	
~~Little Sandy River~~	~~Source to River Mile 71.1 (Headwaters of Grayson Lake)~~	~~Elliott~~	~~WAH, PCR, SCR, DWS~~	
~~Little Sandy River~~	~~River Mile 50.0 (Grayson Lake Dam) to Ohio River~~	~~Greenup~~	~~WAH, PCR, SCR, DWS~~	
~~LAKES AND RESERVOIRS~~				
~~Grayson~~	~~Entire Reservoir~~	~~Carter~~	~~WAH, PCR, SCR~~	
~~Greenbo~~	~~Entire Reservoir~~	~~Greenup~~	~~WAH, CAH, PCR, SCR, DWS~~	
~~TYGARTS CREEK BASIN~~				
~~Buffalo Creek~~	~~Source to Tygarts Creek~~	~~Carter~~	~~WAH, PCR, SCR~~	
~~Little White Oak Creek~~	~~Source to Tygarts Creek~~	~~Greenup~~	~~WAH, PCR, SCR~~	
~~Tygarts Creek~~	~~Source to Ohio River~~	~~Greenup~~	~~WAH, PCR, SCR, DWS~~	
~~White Oak Creek~~	~~Source to Tygarts Creek~~	~~Greenup~~	~~WAH, PCR, SCR~~	
~~LICKING RIVER BASIN~~				
~~Burning Fork~~	~~Basin~~	~~Magoffin~~	~~WAH, PCR, SCR~~	
~~Craney Creek~~	~~Source to North Fork of Licking River~~	~~Rowan/ Morgan~~	~~CAH, PCR, SCR~~	
~~Fleming Creek~~	~~Source to Licking River~~	~~Nicholas~~	~~WAH, PCR, SCR~~	
~~Licking River~~	~~Source to River Mile 218.2 (Headwaters of Cave Run Lake)~~	~~Morgan~~	~~WAH, PCR, SCR, DWS~~	
~~Licking River~~	~~River Mile 176.8 (Cave Run Lake Dam) to River Mile 169.6 (U.S. Highway 60 Bridge)~~	~~Bath/Rowan~~	~~CAH, PCR, SCR, DWS~~	
~~Licking River~~	~~River Mile 169.6 to River Mile 165.0~~	~~Bath/Rowan~~	~~WAH, PCR, SCR, DWS~~	
~~Licking River~~	~~River Mile 165.0 to River Mile 154.5~~	~~Bath/Rowan~~	~~WAH, PCR, SCR,~~	

			~~OSRW~~	
~~Licking River~~	~~River Mile 154.5 to River Mile 115.0~~	~~Nicholas/ Bourbon~~	~~WAH, PCR, SCR, DWS~~	
~~Licking River~~	~~River Mile 115.0 to River Mile 18.9~~	~~Kenton/ Campbell~~	~~WAH, PCR, SCR, DWS, OSRW~~	
~~Licking River~~	~~River Mile 18.9 to Ohio River~~	~~Kenton/ Campbell~~	~~WAH, PCR, SCR, DWS~~	
~~Minor Creek~~	~~River Mile 2.0 to Craney Creek~~	~~Morgan/Rowan~~	~~CAH, PCR, SCR~~	
~~North Fork of Licking River~~	~~Source to Licking River~~	~~Pendleton/ Bracken~~	~~WAH, PCR, SCR, DWS~~	
~~Slabcamp Creek~~	~~Basin including Stonecoal Branch~~	~~Rowan~~	~~CAH, PCR, SCR~~	
~~Slate Creek~~	~~Source to Licking River~~	~~Bath~~	~~WAH, PCR, SCR, DWS~~	
~~South Fork of Licking River~~	~~River Mile 65.1 to Licking River~~	~~Pendleton~~	~~WAH, PCR, SCR, DWS~~	
~~LAKES AND RESERVOIRS~~				
~~Cave Run~~	~~Entire Reservoir~~	~~Rowan/Bath~~	~~WAH, PCR, SCR~~	
~~KENTUCKY RIVER BASIN~~				
~~Bailey Run~~	~~Basin~~	~~Anderson~~	~~WAH, PCR, SCR~~	
~~Buck Lick Branch~~	~~Basin~~	~~Lee~~	~~WAH, PCR, SCR~~	
~~Cedar Brook~~	~~Basin~~	~~Anderson~~	~~WAH, PCR, SCR~~	
~~Chimney Top Creek~~	~~Basin~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Clarks Run~~	~~Source to Herrington Lake~~	~~Boyle~~	~~WAH, PCR, SCR~~	
~~Dix River~~	~~Source to River Mile 33.1 (Headwaters of Herrington Lake)~~	~~Boyle/ Garrard~~	~~WAH, PCR, SCR~~	
~~Dix River~~	~~Herrington Lake Dam to Kentucky River~~	~~Garrard/ Mercer~~	~~CAH, PCR, SCR~~	
~~Dog Fork~~	~~Basin~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~East Fork of Indian Creek~~	~~Source to Indian Creek~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~Gladie Creek~~	~~Basin~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~Hanging Fork Creek~~	~~Source to Dix River~~	~~Boyle/Lincoln~~	~~WAH, PCR, SCR~~	
~~Indian Creek~~	~~River Mile 5.2 to River Mile 1.2~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~Kentucky River~~	~~River Mile 254.8 to Ohio River~~	~~Carroll~~	~~WAH, PCR, SCR, DWS~~	
~~Middle Fork of Kentucky River~~	~~Source to River Mile 76.6 (Headwaters of Buckhorn Lake)~~	~~Leslie~~	~~WAH, PCR, SCR~~	
~~Middle Fork of Kentucky River~~	~~River Mile 43.2 (Buckhorn Lake Dam) to North Fork of Kentucky River~~	~~Lee~~	~~WAH, PCR, SCR~~	
~~Middle Fork of Red River~~	~~Source to River Mile 10.6~~	~~Powell~~	~~CAH, PCR, SCR~~	
~~North Fork of Kentucky River~~	~~Source to Kentucky River~~	~~Lee~~	~~WAH, PCR, SCR, DWS~~	
~~Parched Corn Creek~~	~~Source to Red River~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Red River~~	~~Source to River Mile 68.6~~	~~Menifee/ Wolfe~~	~~WAH, PCR, SCR~~	
~~Red River~~	~~River Mile 68.6 to River Mile 49.2~~	~~Menifee/ Wolfe~~	~~WAH, PCR, SCR, OSRW~~	
~~Red River~~	~~River Mile 49.2 to Kentucky River~~	~~Clark/Estill~~	~~WAH, PCR, SCR, DWS~~	
~~Ross Creek~~	~~Source to Kentucky River~~	~~Lee~~	~~WAH, PCR, SCR~~	
~~Silver Creek~~	~~Source to Kentucky River~~	~~Madison~~	~~WAH, PCR, SCR~~	
~~South Fork of Elkhorn Creek~~	~~Source to North Fork of Elkhorn Creek~~	~~Franklin~~	~~WAH, PCR, SCR~~	
~~South Fork of Kentucky River~~	~~Source to Kentucky River~~	~~Lee~~	~~WAH, PCR, SCR, DWS~~	
~~Swift Camp Creek~~	~~Source to Red River~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Town Branch~~	~~Source to South Fork of Elkhorn Creek~~	~~Fayette~~	~~WAH, PCR, SCR~~	
~~War Fork of Station Camp Creek~~	~~Source to River Mile 8.5~~	~~Jackson~~	~~WAH, PCR, SCR~~	
~~War Fork of Station Camp Creek~~	~~River Mile 8.5 to River Mile 2.0~~	~~Jackson~~	~~CAH, PCR, SCR~~	
~~War Fork of Station Camp Creek~~	~~River Mile 2.0 to Station Camp Creek~~	~~Jackson~~	~~WAH, PCR, SCR~~	
~~LAKES AND RESERVOIRS~~				
~~Bert Combs~~	~~Entire Reservoir~~	~~Clay~~	~~WAH, CAH, PCR, SCR, DWS~~	
~~Buckhorn~~	~~Entire Reservoir~~	~~Perry~~	~~WAH, PCR, SCR, DWS~~	
~~Carr Fork~~	~~Entire Reservoir~~	~~Knott/Perry~~	~~WAH, PCR, SCR~~	
~~Fishpond~~	~~Entire Reservoir~~	~~Letcher~~	~~WAH, CAH, PCR, SCR~~	
~~Herrington~~	~~Entire Reservoir~~	~~Garrard/Mercer~~	~~WAH, PCR, SCR, DWS~~	
~~Mill Creek~~	~~Entire Reservoir~~	~~Wolfe~~	~~WAH, CAH, PCR, SCR, DWS~~	
~~SALT RIVER BASIN~~				
~~Beech Fork of Salt River~~	~~Source to Salt River~~	~~Hardin/Bullitt~~	~~WAH, PCR, SCR, DWS~~	
~~Chenoweth Run~~	~~Source to Floyds Fork~~	~~Jefferson~~	~~WAH, PCR, SCR~~	
~~Currys Fork~~	~~Confluence of South and North Forks to Floyds Fork~~	~~Oldham~~	~~WAH, PCR, SCR~~	
~~Floyds Fork~~	~~Source to Salt River~~	~~Bullitt~~	~~WAH, PCR, SCR~~	
~~Mill Creek~~	~~Source to Salt River~~	~~Bullitt~~	~~WAH, PCR, SCR~~	

~~North Fork of Currys Fork~~	~~Source to South Fork of Currys Fork~~	~~Oldham~~	~~WAH, PCR, SCR~~	
~~Rolling Fork of Salt River~~	~~Source to River Mile 62.5~~	~~Larue and Nelson~~	~~WAH, PCR, SCR, DWS~~	
~~Rolling Fork of Salt River~~	~~River Mile 62.5 to River Mile 53.6~~	~~Larue and Nelson~~	~~WAH, PCR, SCR, OSRW~~	
~~Rolling Fork of Salt River~~	~~River Mile 53.6 to Salt River~~	~~Larue and Nelson~~	~~WAH, PCR, SCR~~	
~~Rolling Fork of Salt River~~	~~Source to Salt River~~	~~Bullitt~~	~~WAH, PCR, SCR, DWS~~	
~~Salt River~~	~~Source to River Mile 74.8 (Headwaters of Taylorsville Lake)~~	~~Anderson~~	~~WAH, PCR, SCR, DWS~~	
~~Salt River~~	~~River Mile 60.1 (Taylorsville Lake Dam) to Ohio River~~	~~Hardin/ Jefferson~~	~~WAH, PCR, SCR, DWS~~	
~~Unnamed tributary to Mill Creek~~	~~Source to Mill Creek at River Mile 11.8~~	~~Bullitt~~	~~WAH, PCR, SCR~~	
~~LAKES AND RESERVOIRS~~				
~~Taylorsville~~	~~Entire Reservoir~~	~~Spencer~~	~~WAH, PCR, SCR~~	
~~GREEN RIVER BASIN~~				
~~Barren River~~	~~Source to River Mile 118.5 (Headwaters of Barren River Lake)~~	~~Allen~~	~~WAH, PCR, SCR~~	
~~Barren River~~	~~River Mile 79.1 (Barren River Lake Dam) to River Mile 15.0~~	~~Warren~~	~~WAH, PCR, SCR, DWS~~	
~~Barren River~~	~~River Mile 15.0 to Green River~~	~~Butler/Warren~~	~~WAH, PCR, SCR, OSRW~~	
~~Beaverdam Creek~~	~~Source to Green River~~	~~Edmonson~~	~~CAH, PCR, SCR~~	
~~Big Pitman Creek~~	~~Source to Green River~~	~~Green~~	~~WAH, PCR, SCR~~	
~~Black Lick Creek~~	~~Source to Clear Fork~~	~~Logan~~	~~WAH, PCR, SCR, DWS~~	
~~Buck Horn Creek~~	~~Source to Little Pitman Creek~~	~~Taylor~~	~~WAH, PCR, SCR~~	
~~Buffalo Creek~~	~~Source to Green River (in Mammoth Cave National Park)~~	~~Edmonson~~	~~WAH, PCR, SCR~~	
~~Cypress Creek~~	~~Source to Pond River~~	~~McLean~~	~~WAH, PCR, SCR~~	
~~Drakes Creek~~	~~Confluence of West Fork and Middle Fork to Barren River~~	~~Warren~~	~~WAH, PCR, SCR~~	
~~Gasper River~~	~~Source to Barren River~~	~~Warren~~	~~WAH, PCR, SCR~~	
~~Green River~~	~~Source to River Mile 340.1 (Headwaters of Green River Lake)~~	~~Adair~~	~~WAH, PCR, SCR, DWS~~	
~~Green River~~	~~River Mile 305.6 (Green River Lake Dam) to River Mile 207.8~~	~~Hart~~	~~WAH, PCR, SCR, OSRW, DWS~~	
~~Green River~~	~~River Mile 207.8 to River Mile 181.7~~	~~Edmonson~~	~~WAH, PCR, SCR, OSRW~~	
~~Green River~~	~~River Mile 181.7 to River Mile 168.0~~	~~Butler/ Warren~~	~~WAH, PCR, SCR, DWS~~	
~~Green River~~	~~River Mile 168.0 to River Mile 148.0~~	~~Butler~~	~~WAH, PCR, SCR, OSRW~~	
~~Green River~~	~~River Mile 148.0 to Ohio River~~	~~Henderson~~	~~WAH, PCR, SCR, DWS~~	
~~Lick Creek~~	~~Source to West Fork of Drakes Creek~~	~~Simpson~~	~~CAH, PCR, SCR~~	
~~Little Pitman Creek~~	~~Source to Big Pitman Creek~~	~~Green~~	~~WAH, PCR, SCR~~	
~~Lynn Camp Creek~~	~~Source to Green River~~	~~Hart~~	~~CAH, PCR, SCR~~	
~~Middle Pitman Creek~~	~~Source to Big Pitman Creek~~	~~Green~~	~~WAH, PCR, SCR~~	
~~Underground River System~~	~~Mammoth Cave National Park~~	~~Edmonson/ Hart/Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Turnhole Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson/ Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Echo River~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Pike Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Mile 205.7 Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart~~	~~CAH, PCR, SCR, OSRW~~	
~~McCoy Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart~~	~~CAH, PCR, SCR, OSRW~~	
~~Suds Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart/Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Double Sink Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson/ Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Ganter Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Running Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Mud River~~	~~Source to Green River~~	~~Butler/ Muhlenberg~~	~~WAH, PCR, SCR~~	
~~Nolin River~~	~~Source to River Mile 64.3 (Headwaters of Nolin Lake)~~	~~Hart/Grayson~~	~~WAH, PCR, SCR~~	

~~Nolin River~~	~~River Mile 7.6 (Nolin Lake Dam) to Green River~~	~~Edmonson~~	~~CAH, PCR, SCR~~	
~~Rough River~~	~~Source to River Mile 133.8 (Headwaters of Rough River Lake)~~	~~Hardin~~	~~WAH, PCR, SCR, DWS~~	
~~Rough River~~	~~River Mile 89.3 (Rough River Lake Dam) to River Mile 88.5~~	~~Ohio/ Grayson~~	~~CAH, PCR, SCR, DWS~~	
~~Rough River~~	~~River Mile 72.4 to Green River~~	~~McLean/Ohio~~	~~WAH, PCR, SCR, DWS~~	
~~Rough River~~	~~River Mile 88.5 to River Mile 74.2~~	~~Ohio/ Grayson~~	~~WAH, PCR, SCR~~	
~~Rough River~~	~~River Mile 74.2 to River Mile 73.6~~	~~McLean/Ohio~~	~~CAH, PCR, SCR~~	
~~Rough River~~	~~River Mile 73.6 to Green River~~	~~Ohio/ Grayson~~	~~WAH, PCR, SCR, DWS~~	
~~Roundstone Creek~~	~~Source to Hwy 1140 (River Mile 3.5)~~	~~Hart~~	~~CAH, PCR, SCR~~	
~~Sharp's Branch~~	~~Source to West Fork of Drakes Creek~~	~~Simpson~~	~~WAH, PCR, SCR~~	
~~Trammel Fork~~	~~River Mile 30.15 (Kentucky/Tennessee State Line) to Hwy 31E (River Mile 23.6)~~	~~Allen~~	~~CAH, PCR, SCR~~	
~~Trammel Fork~~	~~River Mile 23.6 to Drakes Creek~~	~~Warren~~	~~WAH, PCR, SCR~~	
~~West Fork of Drakes Creek~~	~~Source to Confluence with Middle Fork of Drakes Creek~~	~~Warren~~	~~WAH, PCR, SCR, DWS~~	
~~Wiggington Creek~~	~~Source to Gasper River~~	~~Logan~~	~~WAH, PCR, SCR~~	
~~LAKES AND RESERVOIRS~~				
~~Barren River~~	~~Entire Reservoir~~	~~Barren/Allen~~	~~WAH, PCR, SCR, DWS~~	
~~Green River~~	~~Entire Reservoir~~	~~Taylor~~	~~WAH, PCR, SCR, DWS~~	
~~Nolin~~	~~Entire Reservoir~~	~~Edmonson~~	~~WAH, PCR, SCR, DWS~~	
~~Rough River~~	~~Entire Reservoir~~	~~Breckinridge/ Grayson~~	~~WAH, PCR, SCR, DWS~~	
~~LOWER CUMBERLAND RIVER BASIN~~				
~~Casey Creek~~	~~Source to Little River~~	~~Trigg~~	~~CAH, PCR, SCR~~	
~~Cumberland River~~	~~River Mile 30.8 (Lake Barkley Dam) to Ohio River~~	~~Livingston~~	~~WAH, PCR, SCR, DWS~~	
~~Skinframe Creek~~	~~Source to Livingston Creek~~	~~Lyon~~	~~CAH, PCR, SCR~~	
~~Sulphur Spring Creek~~	~~Source to Red River~~	~~Simpson~~	~~CAH, PCR, SCR~~	
~~West Fork of Red River~~	~~River Mile 32.2 to Kentucky/Tennessee State Line (River Mile 14.5)~~	~~Christian~~	~~CAH, PCR, SCR~~	
~~Whippoorwill Creek~~	~~Source to Red River~~	~~Logan~~	~~WAH, PCR, SCR, OSRW~~	
~~LAKES AND RESERVOIRS~~				
~~Barkley~~	~~Entire Reservoir from Kentucky/Tennessee State Line (River Mile 74.7)~~	~~Lyon/ Livingston~~	~~WAH, PCR, SCR, DWS~~	
~~TENNESSEE RIVER BASIN~~				
~~Tennessee River~~	~~River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0~~	~~Livingston/ McCracken~~	~~WAH, PCR, SCR, OSRW~~	
~~Tennessee River~~	~~River Mile 12.0 to Ohio River~~	~~Livingston/ McCracken~~	~~WAH, PCR, SCR, DWS~~	
~~LAKES AND RESERVOIRS~~				
~~Kentucky~~	~~Entire Reservoir from Kentucky/Tennessee State Line (River Mile 62.4)~~	~~Livingston/ Marshall~~	~~WAH, PCR, SCR, DWS~~	
~~TRADEWATER RIVER BASIN~~				
~~Crab Orchard Creek/Vaughn Ditch~~	~~Source to Tradewater River~~	~~Webster~~	~~WAH, PCR, SCR~~	
~~Montgomery Creek~~	~~Source to Tradewater River~~	~~Caldwell~~	~~WAH, PCR, SCR~~	
~~Tradewater River~~	~~Source to Ohio River~~	~~Crittenden/ Union~~	~~WAH, PCR, SCR~~	
~~OHIO RIVER BASIN (Main Stem and Minor Tributaries)~~				
~~Doe Run Creek~~	~~Source to Hwy 1628 (River Mile 5.15)~~	~~Meade~~	~~CAH, PCR, SCR~~	
~~Ohio River~~	~~Big Sandy River (River Mile 317.1) to River Mile 848.0~~	~~Union~~	~~WAH, PCR, SCR, DWS~~	
~~Ohio River~~	~~River Mile 848.0 to River Mile 850.0~~	~~Union~~	~~WAH, PCR, SCR, OSRW~~	
~~Ohio River~~	~~River Mile 850.0 to River Mile 859.0~~	~~Union~~	~~WAH, PCR, SCR~~	
~~Ohio River~~	~~River Mile 859.0 to River Mile 861.0~~	~~Union~~	~~WAH, PCR, SCR, OSRW~~	
~~Ohio River~~	~~River Mile 861.0 to River Mile 865.0~~	~~Union~~	~~WAH, PCR, SCR~~	
~~Ohio River~~	~~River Mile 865.0 to River Mile 867.0~~	~~Union~~	~~WAH, PCR, SCR, OSRW~~	
~~Ohio River~~	~~River Mile 867.0 to River Mile 940.7~~	~~McCracken~~	~~WAH, PCR, SCR~~	
~~Ohio River~~	~~River Mile 940.7 to River Mile 943.3~~	~~McCracken~~	~~WAH, PCR, SCR, DWS,~~	

			~~OSRW~~	
~~Ohio River~~	~~River Mile 943.3 to River Mile 948.2~~	~~McCracken~~	~~WAH, PCR, SCR, DWS~~	
~~Ohio River~~	~~River Mile 948.2 to River Mile 949.5~~	~~Ballard~~	~~WAH, PCR, SCR, DWS, OSRW~~	
~~Ohio River~~	~~River Mile 949.5 to River Mile 966.3~~	~~Ballard~~	~~WAH, PCR, SCR, DWS~~	
~~Ohio River~~	~~River Mile 966.3 to River Mile 969.5~~	~~Ballard~~	~~WAH, PCR, SCR, DWS, OSRW~~	
~~Ohio River~~	~~River Mile 969.5 to Mississippi River~~	~~Ballard~~	~~WAH, PCR, SCR, DWS~~	
~~Ohio River~~	~~River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)~~	~~Livingston~~	~~WAH, PCR, SCR, OSRW~~	
~~Otter Creek~~	~~River Mile 9.7 to Ohio River~~	~~Meade~~	~~CAH, PCR, SCR~~	
~~Paddy's Run~~	~~Source to Ohio River~~	~~Jefferson~~	~~PCR, SCR~~	~~401 KAR 5:031, Section 2(1)(d) and (2) do not apply~~
~~Sinking Creek~~	~~Source to Hwy 259 (River Mile 4.0)~~	~~Breckinridge~~	~~CAH, PCR, SCR~~	
~~White Oak Creek~~	~~River Mile 1.08 to Ohio River~~	~~Greenup~~	~~SCR~~	~~401 KAR 5:031, Section 2(1)(d) and (2) do not apply~~
~~LAKES AND RESERVOIRS~~				
~~Metropolis~~	~~Entire Lake~~	~~McCracken~~	~~WAH, PCR, SCR, OSRW~~	
~~Swan~~	~~Entire Lake~~	~~Ballard~~	~~WAH, PCR, SCR, OSRW~~	
~~MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)~~				
~~Bayou de Chien~~	~~Source to River Mile 13.0~~	~~Hickman~~	~~WAH, PCR, SCR, OSRW~~	
~~Cane Creek of Bayou de Chien~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Jackson Creek~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Sand Creek~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Bayou de Chien~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Mississippi River~~	~~Confluence with Ohio River to River Mile 947.0~~	~~Carlisle~~	~~WAH, PCR, SCR~~	
~~Mississippi River~~	~~River Mile 947.0 to River Mile 945.0~~	~~Carlisle~~	~~WAH, PCR, SCR, OSRW~~	
~~Mississippi River~~	~~River Mile 945.0 to River Mile 935.0~~	~~Carlisle~~	~~WAH, PCR, SCR~~	
~~Mississippi River~~	~~River Mile 935.0 to River Mile 930.0~~	~~Carlisle~~	~~WAH, PCR, SCR, OSRW~~	
~~Mississippi River~~	~~River Mile 930.0 to Kentucky/Tennessee State Line~~	~~Fulton~~	~~WAH, PCR, SCR~~	
~~Murphy's Pond~~	~~Entire Pond and Preserve Area~~	~~Hickman~~	~~WAH, PCR, SCR, OSRW~~	
~~UPPER CUMBERLAND RIVER BASIN~~				
~~Acorn Fork~~	~~Basin above River Mile 1.0~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Adams Branch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Archers Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bad Branch~~	~~Basin~~	~~Letcher~~	~~CAH, PCR, SCR, OSRW~~	
~~Bark Camp Creek~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR~~	
~~Beaver Creek~~	~~Basin~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Beaver Creek~~	~~Source to Lake Cumberland~~	~~Wayne~~	~~WAH, PCR, SCR~~	
~~Beck's Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR~~	
~~Bennetts Fork of Yellow Creek~~	~~Basin (Kentucky/Tennessee State Line) above River Mile 5.0~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Bens Fork of Little Clear Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Big Branch~~	~~Basin Above River Mile 0.8~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Big Lick Branch~~	~~Basin~~	~~Pulaski~~	~~WAH, PCR, SCR,~~	

			~~OSRW~~	
~~Big South Fork of Cumberland River~~	~~River Mile 55.2 to River Mile 45.0~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Blacksnake Branch~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Breeden's Creek~~	~~Basin~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~Brices Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Brownies Creek~~	~~Basin to River Mile 10.0~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~Buck Creek~~	~~River Mile 53.3 to River Mile 10.5~~	~~Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Buck Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bucks Branch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Buffalo Creek~~	~~Basin to Kentucky/Tennessee State Line (River Mile 3.2)~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bunches Creek~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR, OSRW~~	
~~Campbell Branch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cane Creek~~	~~Basin~~	~~Laurel~~	~~WAH, PCR, SCR~~	
~~Caney Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Cannon Creek~~	~~Basin above Cannon Creek Lake~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Clover Bottom Creek~~	~~River Mile 1.4 to Horselick Creek~~	~~Jackson~~	~~CAH, PCR, SCR~~	
~~Cogur Fork~~	~~Basin~~	~~McCreary~~	~~CAH, PCR, SCR~~	
~~Coles Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Colliers Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Criscillis Branch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cumberland River~~	~~River Mile 694.2 to River Mile 574.6~~	~~Whitley~~	~~WAH, PCR, SCR, DWS~~	
~~Cumberland River~~	~~River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)~~	~~McCreary/ Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cumberland River~~	~~River Mile 460.9 (Lake Cumberland Dam) to Kentucky/Tennessee State Line (River Mile 401.05)~~	~~Monroe~~	~~CAH, PCR, SCR, DWS~~	
~~Davis Branch~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Difficulty Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR~~	
~~Dog Slaughter Creek~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR, OSRW~~	
~~Eagle Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Four Mile Creek~~	~~Basin above River Mile 2.5~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Four Mile Run~~	~~Basin above River Mile 1.0~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Fugitt Creek~~	~~Basin~~	~~Harlan~~	~~CAH, PCR, SCR~~	
~~Hale Fork~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Hawk Creek~~	~~Basin~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Hinkle Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Honeycutt Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Horse Lick Creek~~	~~River Mile 12.3 to Middle Fork of Rockcastle River~~	~~Jackson/ Rockcastle~~	~~WAH, PCR, SCR, OSRW~~	
~~Hunting Shirt Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Indian Creek~~	~~Source to Barren Fork~~	~~McCreary~~	~~CAH, PCR, SCR~~	
~~Jennys Branch~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Kelly Branch~~	~~Basin~~	~~Harlan~~	~~WAH, PCR, SCR~~	
~~Kennedy Creek~~	~~River Mile 1.0 to Little South Fork of Cumberland River~~	~~Wayne~~	~~WAH, PCR, SCR, OSRW~~	
~~Kilburn Fork of Indian Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR,~~	

			~~OSRW~~	
~~Laurel Creek of Marsh Creek~~	~~River Mile 9.0 to River Mile 3.4~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Laurel Fork~~	~~Source to Middle Fork of Rockcastle River~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Clear Fork~~	~~Basin above River Mile 16.0~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Clear Fork~~	~~River Mile 16.0 to River Mile 4.25 (Kentucky/Tennessee State Line)~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Indian Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel River~~	~~Laurel River Lake Dam (River Mile 2.1) to River Mile 0.9~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Lick Fork~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Clear Creek~~	~~Basin from Confluence with Fuson Branch~~	~~Bell~~	~~WAH, PCR, SCR~~	
~~Little Poplar Creek~~	~~Basin above and including East Ridge Branch~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Little South Fork of Cumberland River~~	~~River Mile 35.6 to River Mile 4.1~~	~~Wayne~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Yellow Creek~~	~~River Mile 3.2 (Fern Lake Dam) to Yellow Creek~~	~~Bell~~	~~WAH, PCR, SCR~~	
~~Long Branch~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Looney Creek~~	~~Basin above River Mile 5.3~~	~~Harlan~~	~~CAH, PCR, SCR~~	
~~Marsh Creek~~	~~Basin above River Mile 24.0~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Marsh Creek~~	~~River Mile 24.0 to Confluence with Cumberland River~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Martins Fork~~	~~Basin above River Mile 31.3~~	~~Harlan~~	~~CAH, PCR, SCR~~	
~~Martin's Fork~~	~~River Mile 31.3 to River Mile 27.4~~	~~Harlan~~	~~CAH, PCR, SCR, OSRW~~	
~~Meadow Fork~~	~~Basin~~	~~Letcher~~	~~WAH, PCR, SCR, OSRW~~	
~~Middle Fork of Rockcastle River~~	~~River Mile 61.1 to River Mile 53.3~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	
~~Mill Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Mill Creek of Straight Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Mill Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Moores Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Mud Creek~~	~~Basin above River Mile 6.5~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Mud Lick~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Ned Branch~~	~~Basin~~	~~Laurel~~	~~WAH, PCR, SCR, OSRW~~	
~~Patterson Creek~~	~~Basin above River Mile 7.4~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Poor Fork of Cumberland River~~	~~Basin above River Mile 742.5~~	~~Letcher~~	~~CAH, PCR, SCR, OSRW~~	
~~Poor Fork of Cumberland River~~	~~River Mile 742.5 to Jefferson National Forest Boundary (River Mile 720.55)~~	~~Harlan~~	~~WAH, PCR, SCR~~	
~~Poor Fork of Cumberland River~~	~~River Mile 720.55 to Clover Fork of Cumberland River~~	~~Harlan~~	~~WAH, PCR, SCR, DWS~~	
~~Razor Fork~~	~~Basin~~	~~Harlan~~	~~WAH, PCR, SCR~~	
~~Richland Creek~~	~~Basin above River Mile 15.7~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Roaring Fork~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Rock Creek~~	~~Kentucky/Tennessee State Line (River Mile 21.9) to White Oak Creek~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Roc[illegible]ek~~	~~Basin from confluence with Jellico Creek~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Roc[illegible] River~~	~~River Mile 53.3 to River Mile 8.5~~	~~Laurel/ Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Ro[illegible]ch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR,~~	

			~~OSRW~~	
~~Roundstone Creek~~	~~Source to River Mile 13.5~~	~~Rockcastle~~	~~WAH, PCR, SCR~~	
~~Roundstone Creek~~	~~River Mile 13.5 to River Mile 4.7~~	~~Rockcastle~~	~~WAH, PCR, SCR, OSRW~~	
~~Roundstone Creek~~	~~River Mile 4.7 to Rockcastle River~~	~~Rockcastle~~	~~WAH, PCR, SCR, DWS~~	
~~Ryans Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Sanders Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Shillalah Creek~~	~~Source to Cumberland Gap National Historical Park Boundary~~	~~Bell~~	~~CAH, PCR, SCR~~	
~~Shut-in Branch~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Sinking Creek~~	~~Source to Rockcastle River~~	~~Laurel~~	~~WAH, PCR, SCR, OSRW~~	
~~Sims Fork~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Smith Creek~~	~~Basin~~	~~Letcher~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Rockcastle River~~	~~River Mile 2.1 to Rockcastle River~~	~~Rockcastle~~	~~WAH, PCR, SCR, OSRW~~	
~~Stevenson Branch~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Stony Fork of Bennetts Fork~~	~~Basin above River Mile 2.2~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Straight Creek~~	~~Basin~~	~~Harlan~~	~~WAH, PCR, SCR~~	
~~Sugar Run~~	~~Source to Cumberland Gap National Historical Park Boundary~~	~~Bell~~	~~WAH, PCR, SCR~~	
~~Trace Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Trammel Fork~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Troublesome Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR~~	
~~Turkey Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Tyes Fork of Bennetts Fork~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Watts Creek~~	~~Basin above Camp Blanton Lake~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~White Oak Creek~~	~~Basin above River Mile 1.2 (includes Little White Oak Creek)~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Wood Creek~~	~~River Mile 4.0 (Wood Creek Lake Dam) to Hazel Patch Creek~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Yellow Creek~~	~~Source to Cumberland River~~	~~Bell~~	~~WAH, PCR, SCR~~	
~~Youngs Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~LAKES AND RESERVOIRS~~				
~~Beulah (=Tyner)~~	~~Entire Reservoir~~	~~Jackson~~	~~WAH, CAH, PCR, SCR, DWS~~	
~~Cannon Creek~~	~~Entire Reservoir~~	~~Bell~~	~~WAH, CAH, PCR, SCR, DWS~~	
~~Cumberland~~	~~Entire Reservoir~~	~~Pulaski~~	~~WAH, PCR, SCR, DWS~~	
~~Dale Hollow~~	~~Entire portion of Reservoir within Kentucky~~	~~Clinton/ Cumberland~~	~~WAH, PCR, SCR, DWS~~	
~~Laurel River~~	~~Entire Reservoir~~	~~Laurel/Whitley~~	~~WAH, CAH, PCR, SCR, DWS~~	
~~Martins Fork~~	~~Entire Reservoir~~	~~Harlan~~	~~WAH, PCR, SCR~~	
~~Wood Creek~~	~~Entire Reservoir~~	~~Laurel~~	~~WAH, CAH, PCR, SCR, DWS]~~	

Section 6. Incorporation by Reference. (1) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 Publication EPA-823-B-95-002. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, **200 Fair Oaks Lane** [~~14 Reilly Road~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 12, 2008 at noon

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation lists the types of designated uses for surface waters

of the Commonwealth, provides for redesignation of surface waters, describes the process for redesignation of surface waters, and lists designated uses for specific surface waters of the Commonwealth that have been assigned designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the reader of the types of designated use categories for surface waters of the Commonwealth, to provide for redesignation of surface waters, and to list designated uses assigned to surface waters. The list of designated uses assigned to specific surface waters of the Commonwealth is a reference tool necessary for the reader to identify which designated uses apply to specific surface waters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth and thus manage water resources and prevent water pollution. This administrative regulation also makes all surface waters subject to the general criteria specified in 401 KAR 10:031, Section 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of statutes by providing for redesignation of surface waters and by listing the designated uses assigned to specific waters of the Commonwealth. Having the designated uses listed in this way will enable the reader to know which regulatory criteria relate to which water. This information is supportive to achieving compliance with administrative regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment alphabetizes table headings in this administrative regulation. This amendment creates a new table, Table B, which indicates specific locations (latitude or longitude and river mile) of 183 surface water intakes and thus the exact locations where domestic water supply criteria in 10:031, Section 6, are applicable. It adds 233 previously unlisted outstanding state resource waters and removes 2 previously listed outstanding state resource waters because of faulty location records for federally threatened and endangered species. This amendment also removes 74 surface waters from the previous table of Surface Water Use Designations that had only the default uses of Warm Water Aquatic Life, Domestic Water Supply, and Primary and Secondary Contact Recreation so that only waters with non-default uses (Outstanding State Resource Waters and Cold Water Aquatic Habitat) are listed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more fully protect the Commonwealth's best waters by adding 233 waters to the Outstanding State Resource Water use and removes 2 previously listed outstanding state resource waters because of faulty location records for federally threatened and endangered species. The amended regulation will be more user-friendly by omitting 74 waters from the table that only have default uses, leaving only those waters with non-default uses in Table B.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100 that requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This amendment and 401 KAR 10:002, 10:029, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth. This amendment applies the standards to protect designated uses described in 401 KAR 10:031 to surface waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates waters listed in specific designated uses based on the most recent scientific information. It also adds 233 of the state's best waters to the outstanding State Resource Water use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to designated uses to the surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local governments if they will have new or expanded discharges into surface waters of the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The permit limits imposed on dischargers may result in additional or reduced treatment outlays, training costs, and operational changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. All but 9 of the 233 proposed new Outstanding State Resource Waters (OSRWs) are identified as such because of excellent biological communities (fish or macroinvertebrates) as per existing regulatory framework in 401 KAR 10:030 that qualify them as Exceptional waters. The other 9 are OSRWs because they contain federally threatened or endangered species. Virtually all of these proposed new OSRWs are in less developed parts of the state with few existing entities that discharge into these waters. There is 1 revised criterion that applies to all 352 OSRWs, including the 233 new proposed OSRWs. That criterion is a slightly more stringent requirement for dissolved oxygen (6.0 mg/l versos the existing 5.0 mg/l). The purpose of the new standard is to provide additional protection to the biological community for a critical component (oxygen) of the stream environment. It is anticipated that costs associated with complying with this proposed requirement will be minimal, given that compliance with dissolved oxygen standards can be readily achieved with existing treatment technology. Other existing water quality requirements that may be imposed are anticipated to be the same for exiting discharges into these waters. The agency has existing regulatory authority to require more stringent requirements in specific cases if necessary to protect the quality of the OSRW.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings may be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement. The cabinet does not anticipate additional costs.

(b) On a continuing basis: No major costs are anticipated. The cabinet, in implementing the requirements of this administrative regulation, will internalize associated costs with normal budget appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be General Fund, as appropriated by the Kentucky General Assembly, and federal funds. The existing budget for the Division of Water utilizes approximately $800,000 in general funds and approximately $240,000 in federal funds to implement this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees or funding increases are not anticipated to be necessary to the implementation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: These

amendments will not establish or increase fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Any discharger into a water designated as cold water aquatic habitat will require dischargers into such water to meet requirements outlined in 401 KAR 10:031 that are more stringent than requirements for dischargers into surface water designated warm water aquatic habitat. Any discharger into a water designated as an outstanding resource water by this administrative regulation will also have special requirements as outlined in 401 KAR 10:031. Waters listed in Table B as having a surface water intake will have Domestic Water Supply criteria found in 401 KAR 10:031 Section 6.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to designated uses to the surface waters of the Commonwealth. All governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local governments if they will have discharges into surface waters of the Commonwealth that have been re-designated by this amended regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. 131, 16 U.S.C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1316, 1341

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated.

(c) How much will it cost to administer this program for the first year? There will be no costs.

(d) How much will it cost to administer this program for subsequent years? There will be no cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amended administrative regulation sets forth instream uses designated by the cabinet that in combination with criteria found in 401 KAR 10:031 provide for protection of water quality of the state's waters. Local governments will be required to discharge effluents which assure attainment of the receiving surface water's designated uses. The costs or savings of this amended administrative regulation would ordinarily be passed through to users; however, a local government that owns a public wastewater treatment system could elect to absorb some or all of the costs or savings. Criteria that apply to these re-designations found in this administrative regulation will be implemented at the time of permit issuance at existing facilities and new dischargers and expanded facilities will comply with the revisions. Local governments withdrawing drinking water from these waters may have lower treatment costs because these waters have lower pollutant loads. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established, and less costs may be incurred where criteria are less stringent than previously or where criteria have been eliminated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every 3 years and comply with the programmatic requirements of 40 C.F.R. Part 131.

2. State compliance standards. 401 KAR 10:001, 10:026, 10:029, 10:030, and 10:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, federal regulation, 40 C.F.R. 131.10, requires states to take into consideration the value of public water supply, protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. Some higher quality waters (Outstanding State Resource Waters, or OSRW) require additional measures to protect that quality. Thus, Kentucky's structure of designated uses is not more stringent than federal. Most states have regulations similar to Kentucky's designated uses: aquatic life, human health for drinking water and consumption of fish tissue, recreation, and a category similar to our OSRW, and have had these uses approved by EPA. EPA is promoting and has published a guidance document on the concept of a tiered aquatic life use framework, which Kentucky is proposing by adding more excellent waters to the OSRW use.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements. Please see the agency's response to question #4.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:029. General provisions.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 40 C.F.R. **136, 33 U.S.C. 1326(a), EO 2008-507, 2008-**531 [~~Part 136~~]

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. [~~Part~~] 131, 136, 16 U.S.C. 1531-1544 [~~et seq.~~], 33 U.S.C. 1311, 1312, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031[~~401 KAR 5:002, 401 KAR 5:026, 401 KAR 5:030, and 401 KAR 5:031~~] establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. **EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.** This administrative regulation establishes[:] the commonwealth's surface water antidegradation policy, provides[~~provide~~] for withdrawals of waters not meeting water quality standards, and addresses[~~address~~] sample collection and analytical methodology and[~~,~~] mixing zones[~~, and variances for coal remining operations~~].

Section 1. Antidegradation Policy. (1) The purpose of 401 KAR

10:026 through 401 KAR 10:031[~~401 KAR 5:026 to 401 KAR 5:031~~] is to safeguard the surface waters of the commonwealth for their designated uses, to prevent the creation of [~~any~~] new pollution of these waters, and to abate [~~, if applicable~~], [~~any~~] existing pollution.

(2) Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

(a) For point source discharges, water quality shall be maintained and protected in these waters according to the procedures specified in 401 KAR 10:030[~~401 KAR 5:030~~], Section 1(2)(b) or (3)(b).

(b) In allowing degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully.

(c) [~~Further,~~] The cabinet shall assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

(3) Water quality shall be maintained and protected in a water categorized as an outstanding national resource water according to the procedures specified in 401 KAR 10:030[~~401 KAR 5:030~~], Section 1(1)(b).

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according to the procedures specified in 401 KAR 10:031[~~401 KAR 5:031~~], Section 8.

(5) If potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 U.S.C. 1326, shall be in compliance with this section.

Section 2. Withdrawal of Contaminated Water. Surface waters occasionally do not meet[~~may, on occasion, not meet~~] the criteria established in 401 KAR 10:031[~~401 KAR 5:031~~].

(1) Withdrawal and subsequent discharge of these waters without alteration of the physical or chemical characteristics into the same or similar surface water shall not be considered a violation of water quality standards.

(2) The cabinet shall determine KPDES permit limitations in these situations based on the quality of the raw and receiving waters.

(3) The cabinet retains the right to require permit modification under the provisions of 401 KAR 5:035, [~~401 KAR~~] 5:065, [~~401 KAR~~] 5:070, [~~401 KAR~~] 5:075, and [~~401 KAR~~] 5:080.

Section 3. Sample Collection and Analytical Methodology.(1) All methods of preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by 40 C.F.R. [~~Part~~] 136, as amended, if applicable.

(2) Sample collection and other methods not established in subsection (1) of this section[~~found in the above reference~~] may be used as[~~where~~] appropriate if they:

(a)[~~(1)~~] Meet commonly accepted quality assurance and quality control principles;

(b)[~~(2)~~] Are within the accuracy required for determining conformity or nonconformity with water quality standards; and

(c)[~~(3)~~] Receive prior written approval by the cabinet.

Section 4. Mixing Zones. The following requirements shall apply to a mixing zone:

(1) [~~Upon request by the applicant for mixing zones for nonconventional pollutants~~] The cabinet **may** [~~shall~~][~~may~~] assign definable geometric limits for mixing zones for a discharge of[~~or~~] a pollutant or pollutants within a discharge **based on the following criteria:**[~~.~~]

(a) Applicable limits shall include the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones;[~~.~~]

(b) Dilution provided by assigned mixing zones shall not be allowed until applicable limits are assigned by the cabinet in accordance with this section;

(c) In a stream or river, unless assigned on or before December 8, 1999, an assigned mixing zone, from the point of discharge in a spatial direction, shall not exceed one-third (1/3) of the width of the receiving stream or one-half (1/2) of the cross-sectional area;

(d) In a lake or a reservoir, unless assigned on or before December 8, 1999, an assigned mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake, or reservoir at the discharge point;

(e) An assigned mixing zone shall be limited to an area or volume that shall not adversely affect the designated uses of the receiving water and shall not be so large as to adversely affect an established community of aquatic organisms;

(f) The location of a mixing zone shall not:

1. Interfere with fish spawning or nursery areas, fish migration routes, public water supply intakes, or bathing areas;

2. Preclude the free passage of fish or other aquatic life; or

3. Jeopardize the continued existence of endangered or threatened aquatic species listed under Section 4 of the Endangered Species Act, 16 U.S.C. 1531 through 1544, or result in the destruction or adverse modification of their critical habitat;

(g) For thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act, 33 U.S.C. Section 1326(a), shall constitute compliance with this section; and

(h) Unless assigned by the cabinet on or before September 8, 2004, there shall not be mixing zones for bioaccumulative chemicals of concern.

1. A mixing zone that was assigned by the cabinet for a bioaccumulative chemical of concern shall not expire later than September 8, 2014.

2.a. A bioaccumulative chemical of concern is one that accumulates in one (1) or more aquatic organisms by a human health bioaccumulation factor of greater than 1,000.

b. For the purposes of this administrative regulation, bioaccumulative chemicals of concern shall consist of the following:

(i) alpha-Hexachlorocyclohexane;
(ii) beta-Hexachlorocyclohexane;
(iii) Chlordane;
(iv) DDD;
(v) DDE;
(vi) DDT;
(vii) delta-Hexachlorocyclohexane;
(viii) Dieldrin;
(ix) Hexachlorobenzene;
(x) Hexachlorobutadiene;
(xi) Hexachlorocyclohexane;
(xii) Lindane;
(xiii) Mercury;
(xiv) Mirex;
(xv) Octachlorostyrene;
(xvi) PCBs;
(xvii) Pentachlorobenzene;
(xviii) Photomirex;
(xix) Toxaphene;
(xx) 1,2,3,4-Tetrachlorobenzene;
(xxi) 1,2,4,5-Tetrachlorobenzene; and
(xxii) 2,3,7,8-TCDD (Dioxin).

(2) Concentrations of toxic substances that exceed the acute criteria for protection of aquatic life in 401 KAR 10:031[~~401 KAR 5:031~~] shall not exist within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned.

(a) A zone of initial dilution shall[~~may~~] be assigned pursuant to subsection (3) of this section.

(b) Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall apply to a zone of initial dilution:

(a) The cabinet shall require an applicant to provide a technical evaluation for a zone of initial dilution;

(b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of aquatic life at the edge of the assigned zone of initial dilution, except, numeric acute criteria may be exceeded within the zone if the frequency and duration of exposure of aquatic organisms are not sufficient to cause acute toxicity; and

(c) Unless assigned on or before December 8, 1999 [~~the effective date of this administrative regulation~~], a zone of initial dilution for a pollutant shall not be allowed in an exceptional water.

(4) Unless assigned on or before the most recent effective date of this administrative regulation, a zone of initial dilution for a pollutant shall be available only to a submerged high-rate multiport outfall structure with a velocity greater than or equal to three (3) meters per second and shall be limited in size to the most restrictive of the following:

(a) The acute criteria shall be met within ten (10) percent of the distance from the edge of the outfall structure to the edge of the regulatory mixing zone in a spatial direction;

(b) The acute criteria shall be met within a distance of fifty (50) times the square root of the cross-sectional area of a discharge port, in a spatial direction; or

(c) The acute criteria shall be met in a horizontal direction within a distance of five (5) times the natural water depth that prevails under mixing zone design conditions, and exists before the installation of a discharge outlet.

[~~(d) Residence times within the zone of initial dilution for drifting organisms shall not exceed fifteen (15) minutes.~~

~~(5) The location of a mixing zone shall not:~~

~~(a) Interfere with fish spawning or nursery areas, fish migration routes, public water supply intakes, or bathing areas;~~

~~(b) Preclude the free passage of fish or other aquatic life;~~ ~~or~~][and]

[~~(c) Jeopardize the continued existence of~~][any][~~endangered or threatened aquatic species listed under Section 4 of the Federal Endangered Species Act, 16 U.S.C. 1531 through 1544~~][~~et seq.~~][~~, or result in the destruction or adverse modification of their critical habitat.~~

~~(d) Result in a residence time within the mixing zone for drifting organisms of greater than one (1) hour.~~

~~(6) Unless assigned on or before December 8, 1999~~] [~~the effective date of this administrative regulation~~][~~, an assigned mixing zone, from the point of discharge in a spatial direction, shall not exceed one-third (1/3) of the width of the receiving stream or one-half (1/2) of the cross-sectional area.~~

~~(7) In a lake or a reservoir, unless assigned on or before December 8, 1999~~][~~the effective date of this administrative regulation~~][~~, an assigned mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake, or reservoir at the discharge point.~~

~~(8) An assigned mixing zone shall be limited to an area or volume which will not adversely affect the designated uses of the receiving water[,] and shall not be so large as to adversely affect an established community of aquatic organisms.~~

~~(9) For thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act, 33 U.S.C. 1326(a), shall constitute compliance with this section.~~

~~(10) Unless assigned by the cabinet on or before September 8, 2004~~][~~the effective date of this administrative regulation~~][~~, there shall not be mixing zones for bioaccumulative chemicals of concern.~~

~~(a) A~~][Any][~~mixing zone that was assigned by the cabinet for a bioaccumulative chemical of concern shall not expire~~][no][~~later than September 8, 2014~~][~~ten (10) years from the effective date of this administrative regulation~~][~~.~~

~~(b)1. A bioaccumulative chemical of concern is one that accumulates in one (1) or more aquatic organisms by a human health bioaccumulation factor of greater than 1000.~~

~~2. For the purposes of this administrative regulation, bioaccumulative chemicals of concern shall consist of the following:~~

~~a.~~][~~(a)~~][~~alpha-Hexachlorocyclohexane;~~

~~b.~~][~~(b)~~][~~beta-Hexachlorocyclohexane;~~

~~c.~~][~~(c)~~][~~Chlordane;~~

~~d.~~][~~(d)~~][~~DDD;~~

~~e.~~][~~(e)~~][~~DDE;~~

~~f.~~][~~(f)~~][~~DDT;~~

~~g.~~][~~(g)~~][~~delta-Hexachlorocyclohexane;~~

~~h.~~][~~(h)~~][~~Dieldrin;~~

~~i.~~][~~(i)~~][~~Hexachlorobenzene;~~

~~j.~~][~~(j)~~][~~Hexachlorobutadiene;~~

~~k.~~][~~(k)~~][~~Hexachlorocyclohexane;~~

~~l.~~][~~(l)~~][~~Lindane;~~

~~m.~~][~~(m)~~][~~Mercury;~~

~~n.~~][~~(n)~~][~~Mirex;~~

~~o.~~][~~(o)~~][~~Octachlorostyrene;~~

~~p.~~][~~(p)~~][~~PCBs;~~

~~q.~~][~~(q)~~][~~Pentachlorobenzene;~~

~~r.~~][~~(r)~~][~~Photomirex;~~

~~s.~~][~~(s)~~][~~Toxaphene;~~

~~t.~~][~~(t)~~][~~1,2,3,4-Tetrachlorobenzene;~~

~~u.~~][~~(u)~~][~~1,2,4,5-Tetrachlorobenzene; and~~

~~v.~~][~~(v)~~][~~2,3,7,8-TCDD (Dioxin).~~]

[~~Section 5. Water Quality-based Variance for Coal Remining Operations. (1) Applicability. An applicant for a Kentucky pollutant discharge elimination system (KPDES) permit to discharge pollutants from or affected by a coal remining operation may request a variance from the water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031.~~

~~(2) Application requirements.~~

~~(a) The applicant shall comply with all KPDES permit application requirements, as set forth in 401 KAR 5:060.~~

~~(b) The applicant shall submit documentation from the Department for Surface Mining Reclamation and Enforcement (DSMRE) certifying that the proposed coal remining operation will be located on a remined area.~~

~~(c) The applicant shall:~~

~~1. Describe the hydrologic balance for the proposed coal remining operation, including:~~

~~a. Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events, and modeled baseline pollution loads using the monitoring program; and~~

~~b. Monitoring for pH, alkalinity, acidity, total iron, total manganese, sulfates, total suspended solids, and any other water quality parameters requested by the cabinet;~~

~~2. Submit the application for a permit from DSMRE;~~

~~3. Submit, if not submitted in the application for a permit from DSMRE:~~

~~a. Plans, cross-sections, and schematic drawings describing the techniques for reducing the discharge of acid-forming materials, iron and manganese;~~

~~b. A description and an explanation of the range of abatement levels that probably can be achieved, costs, and each step proposed to reduce the discharge of acid-forming materials, iron and manganese;~~

~~c. A description of the spoil handling practices necessary to reduce the discharge of acid-forming materials, iron and manganese; and~~

~~d. A detailed topographic map of the proposed coal remining operation, including the locations of the preexisting and proposed discharges; and~~

~~4. Continue the water quality and quantity monitoring program described in subparagraph 1 of this paragraph, and submit the results to the cabinet on a periodic basis until the cabinet makes a final permit decision. The cabinet shall evaluate the KPDES monitoring program and the DSMRE monitoring program for each applicant to avoid duplication and inconsistencies.~~

~~(d) An applicant with an existing surface coal mining operation seeking a permit revision from DSMRE pursuant to 405 KAR 8:010, Section 20 shall also demonstrate to the satisfaction of the cabinet that:~~

~~1. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and~~

~~2. The applicant has not caused or contributed to the discharges.~~

~~(3) Treatment requirements. If the cabinet issues a KPDES permit to discharge pollutants from or affected by a coal remining operation containing the variance described in subsection (1) of this section, the water quality-based effluent limitations for pH, iron and manganese shall be established on a case-by- case basis. Compliance with those effluent limitations constitutes compliance with those water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031.~~

~~(4) Prohibitions. In addition to the prohibitions contained in 401 KAR 5:055, the following prohibitions apply to this section:~~

~~(a) A KPDES permit containing the water quality-based variance of subsection (1) of this section shall not be issued unless the coal remining operation has applied for a permit from the Department for Surface Mining Reclamation and Enforcement, as set forth in 405 KAR Chapters 7 through 24, inclusive. The effective date of the KPDES permit shall not be sooner than the effective date of the permit issued by the Department for Surface Mining Reclamation and Enforcement.~~

~~(b) A KPDES permit containing the water quality-based variance of subsection (1) of this section shall not be issued for a surface coal mining operation which is not a coal remining operation located on a remined area.~~

~~(c) A KPDES permit containing the water quality-based variance of subsection (1) of this section shall not be issued which would allow the discharges of acid-forming materials, iron or manganese to exceed the levels being discharged from the remined area before the coal remining operation begins.~~

~~(d) A KPDES permit containing the water quality-based variance of subsection (1) of this section shall not be issued if the applicant fails to demonstrate to the satisfaction of the cabinet that the coal remining operation will result in the potential for improved water quality from the remining operation over that existing prior to the remining operation, and that the information provided in the application is adequate for the cabinet to make an informed final permit decision.~~

~~(e) A KPDES permit containing the water quality-based variance of subsection (1) of this section shall not be issued with effluent limitations less stringent than applicable technology-based effluent limitations established in 401 KAR 5:065 or 401 KAR 5:080.~~

~~(f) In addition to the prohibitions of paragraphs (a) through (e) of this subsection, a KPDES permit containing the water quality based variance of subsection (1) of this section shall not be issued for an existing surface coal mining operation unless:~~

~~1. The applicant receives a permit revision from DSMRE in accordance with 405 KAR 8:010, Section 20;~~

~~2. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and~~

~~3. The applicant has not caused or contributed to the discharges since August 3, 1977.~~

~~Section 6. Federal Regulation Adopted Without Change. (1) The following federal regulation governs the subject matter of this administrative regulation and is adopted without change: 40 C.F.R. Part 136 Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 2002, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D. C. 20402-9328.~~

~~(2) This federal regulation may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 12, 2008 at noon

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides general provisions under which water quality regulations operate to protect the surface waters of the Commonwealth. This administrative regulation provides for withdrawal of contaminated water, sample collection and methodology, and mixing zones. This administrative regulation is also used in conjunction with 401 KAR 10:030 to implement antidegradation requirements. The purpose of this administrative regulation is to address the issues for water quality protection not covered in 10:026, 10:030, or 10:031. This administrative regulation is used in conjunction with those administrative regulations to form a complete protection program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the protection of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation establishes the Commonwealth's surface water antidegradation policy (in conjunction with 401 KAR 10:030), provides for withdrawals of waters not meeting water quality standards, addresses sample collection and analytical methodology, requires the elimination of mixing zones for existing discharges of bioaccumulative chemicals of concern by September 2014, and does not allow new mixing zones for bioaccumulative chemicals of concern.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by providing specific requirements for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that, upon request by an applicant, the cabinet shall assign mixing zones and consider the geometric limits of such mixing zones.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish revised measures to protect human health and aquatic life. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended as part of the triennial review.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment and 401 KAR 10:026, 10:030, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes the Commonwealth's surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and address sample collection and analytical methodology, and mixing zones.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by prohibiting discharges that would endanger human health, wildlife, or habitat.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation provides general provisions applicable to municipalities, campgrounds, subdivisions,

businesses, marinas, residences, and government agencies with permitted discharges into surface waters of the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in questions (3) will have to: meet water quality standards, addresses sample collection, establish analytical methodologies, eliminate mixing zones for existing discharges of bioaccumulative chemicals of concern by September 2014, and not allow new mixing zones for bioaccumulative chemicals of concern.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with revisions to this administrative regulation will not result in costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Maintaining existing water quality may have a positive influence on revenues derived from water-based tourism and can result in good quality water for drinking water supplies.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement. Implementation costs should remain relatively constant.

(b) On a continuing basis: No major costs are anticipated. The cabinet, in implementing the requirements of this amended administrative regulation, will internalize associated costs with normal budget appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly. The existing budget for the Division of Water utilizes approximately $800,000 in general funds and approximately $240,000 in federal funds to implement this regulation. There are no initial costs to implement this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees or funding increases are not anticipated to be necessary to the implementation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Dischargers with mixing zones and zones of initial dilution must comply with 401 KAR 10:029, Section 4. Dischargers with mixing zones must comply with the Endangered Species Act and must limit discharges of bioaccumulative chemicals of concern in mixing zones. Dischargers with zones of initial dilution must meet specific criteria specified in Section 4 of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation may affect the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amended administrative regulation relates to local governments' wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Cannot be determined

Expenditures (+/-): Cannot be determined

Other Explanation: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into streams, rivers, and publicly owned lakes and reservoirs. On the other hand, local governments withdrawing drinking water from these waters may have lower treatment costs because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the antidegradation policy.

2. State compliance standards. 401 KAR 10:001, 10:026, 10:029, 10:030, and 10:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:030. Antidegradation policy implementation methodology.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120**, 30 U.S.C. 1201 - 1328, EO 2008-507, 2008-531**

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. [~~Parts~~] 130, 131, 16 U.S.C. 1271-1287 [~~et seq.~~], 1531-1544 [~~et seq.~~], 33 U.S.C.

1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 declares that the policy of the commonwealth is to conserve its waters for legitimate uses, [~~and to:~~] safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. **EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.** This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031[~~401 KAR 5:002, 5:026, 5:029, and 5:031~~] establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029[~~401 KAR 5:029~~] by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. A flow chart outlining the procedures is incorporated by reference for informational purposes in this administrative regulation. These antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 10:029[~~401 KAR 5:029~~], Section 1, for a point source discharge. [~~A flow chart outlining the procedures is incorporated by reference for informational purposes in Section 3 of this administrative regulation. These antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth.~~] Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have implementation procedures as follows:

(1) Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

Table 1
SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER

Stream	Segment	River Miles	County
Red River	Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746	49.2 to [-]68.6	Menifee/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary		Edmonson/ Hart/Barren
[~~Big~~] South Fork of Cumberland River	Downstream Wild River Boundary to Tennessee State line[~~Stateline~~]	**44.3 to 54.8** [~~45.0-55.2~~]	McCreary
Surface Waters within Reelfoot Lake National Wildlife Refuge	Reelfoot Lake National Wildlife Refuge Proclamation Boundary in Kentucky	2040 Acres	Fulton
War Fork of Station Camp Creek	Basin above South Fork of Station Camp Creek to Steer Fork	0.0 to 13.8	Jackson
Marsh Creek	Mouth to 1.9 miles upstream of Kentucky 478	0.0 to 15.0	McCreary
Rock Creek	State border to White Oak Creek	4.1 to 21.9	McCreary
Rockcastle River	Lower end of Narrows to 0.2 miles downstream of Kentucky 80 bridge	**8.95 to 22.4** [~~8.5 to 21.8~~]	Laurel/Pulaski

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10:031[~~401 KAR 5:031~~], Section 8;[~~,~~] and

2. [~~if~~] The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in outstanding national resource water.

2. A new discharger or expanded discharge that[~~which~~] may result in permanent or long-term changes in water quality shall be[~~is~~] prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a[~~no~~] demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as exceptional water are listed in Table 2 of this subsection.

Table 2
SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER

Stream	**Segment**	**River Miles**	**County**
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork of Wolf Creek*	**Mouth to Headwaters**	**0.0-3.9**	**Martin**
Lower Pigeon Branch of Elkhorn Creek*	**Left Fork to Headwaters**	**0.6-1.9**	**Pike**
Russell Fork of Levisa Fork of Big Sandy River*	**Clinch Field RR Yard off HWY 80 to Virginia State Line**	**15.0-16.5**	**Pike**
Toms Branch of Elkhorn Creek*	**Mouth to Headwaters**	**0.0-1.6**	**Pike**
Unidentified Tributary of Hobbs Fork*	**Hobbs Fork of Pigeonroost Fork to Headwaters**	**0.0-0.6**	**Martin**
LITTLE SANDY RIVER BASIN			
Arabs Fork of Big Sinking Creek*	**Clay Fork to Headwaters**	**0.0-5.1**	**Elliott**
Big Caney Creek*	**Grayson Lake to Headwaters**	**1.8-15.3**	**Elliott, Rowan**
Big Sinking Creek of Little Sandy River*	**SR 986 to Clay Fork and Arab Fork**	**6.1-15.8**	**Carter, Elliott**
Meadow Branch of Little Fork of Little Sandy River*	**Mouth to Headwaters**	**0.0-1.4**	**Elliott**
Middle Fork of Little Sandy River*	**Mouth to Sheepskin Branch**	**0.0-3.4**	**Elliott**
Nichols Fork of Little Fork of Little Sandy River*	**Green Branch to Headwaters**	**0.0-2.0**	**Elliott**
Laurel Creek of	**Carter School**	**7.6-14.7**	**Elliott,**

Little Sandy River*	Rd Bridge to Headwaters		Rowan
LICKING RIVER BASIN			
Blackwater Creek of Licking River*	Eaton Creek to Greasy Fork	3.8-11.7	Morgan
Blanket Creek of Licking River	Mouth to Unidentified Tributary	0.0-1.9	Pendleton
Botts Fork of Brushy Fork of Licking River*	Mouth to Landuse Change	0.0-2.1	Menifee
Bowman Creek of Licking River	Mouth to Unidentified Tributary	0.0-6.0	Kenton
Brushy Fork of Meyers Creek*	Cave Run Lake Backwaters to Headwaters	0.7-5.6	Menifee
Brushy Fork of South Fork of Grassy Creek*	Mouth to Headwaters	0.0-5.8	Pendleton
Bucket Branch of North Fork of Licking River*	Mouth to Headwaters	0.0-1.9	Morgan
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek	0.0-1.7	Robertson
Craney Creek of Licking River	Mouth to Headwaters	0.0-11.2	Morgan, Rowan
Devils Fork of North Fork of Licking River*	Mouth to Headwaters	0.0-8.5	Elliott, Morgan
Flour Creek of Licking River	Mouth to Unidentified Tributary	0.0-2.2	Pendleton
Grovers Creek of Kincaid Creek*	Kincaid Lake Backwaters to Unidentified Tributary	0.5-3.4	Bracken, Pendleton
Licking River	SR 211 to unnamed Rd off Slatey Point Rd	159.5-170.6	Bath, Rowan
North Fork of Licking River*	Cave Run Lake Backwaters to Devils Fork	8.4-13.4	Morgan
Sawyers Fork of Cruises Creek	Mouth to Headwaters	0.0-3.3	Kenton
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters	0.0-3.7	Rowan
Slate Creek of Licking River	Mouth to Mill Creek	0.0-13.6	Bath
South Fork Grassy Creek of Grassy Creek of Licking River*	Mouth to Greasy Creek	0.0-19.8	Kenton, Pendleton
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters	0.0-2.2	Mason
Welch Fork of Brushy Fork of Licking River*	Mouth to First Road Crossing	0.0-1.0	Menifee
West Creek of Licking River*	Mouth to Headwaters	0.0-9.8	Harrison, Robertson

KENTUCKY RIVER BASIN			
Backbone Creek of Sixmile Creek of Kentucky River*	Mouth to Scrabble Creek	0.0-1.65 [~~0.0-1.7~~]	Franklin, Henry, Shelby
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters	0.3-1.2	Perry
Big Double Creek of Red Bird River*	Mouth to confluence of Left and Right Forks of Big Double Creek	0.0-6.5	Clay
Bill Branch of Laurel Fork of Greasy Creek*	Mouth to Right Fork and Left Fork Creek	0.0-0.3	Leslie
Billey Fork of Millers Creek	Land Use Change to Headwaters	2.6-8.8	Lee, Elliott
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.6	Owsley
Buffalo Creek of South Fork of Kentucky River*	Mouth to Right Fork and Left Fork	0.0-1.6	Owsley
Cavanaugh Creek*	South Fork of Station Camp Creek to Foxtown Rd	[0.0-8.3] ~~0.0-5.1~~	Jackson
Cherry Run of Boyd Run of North Elkhorn Creek	Mouth to Boyd Run	0.0-0.9	Scott
Chester Creek of Middle Fork of Red River*	Mouth to Headwaters	0.0-2.8	Wolfe
Clear Creek of Kentucky River*	Mouth to East Fork Clear Creek	0.0-9.0	Woodford
Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-4.8	Breathitt
Coles Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-6.2	Breathitt
Craig Creek of Kentucky River*	Mouth to Unidentified Tributary	0.5-2.7	Woodford
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters	0.3-1.3	Leslie
Drennon Creek of Kentucky River*	Fivemile Creek to Town Branch	8.7-12.2	Henry
East Fork of Indian Creek of Indian Creek of Red River River*	West Fork of Indian Creek to Headwaters	0.0-9.0	Menifee
Elisha Creek of Red Bird River*	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek	0.8-1.8	Leslie
Emily Run of Drennon Creek	Mouth to Unidentified Tributary	0.0-4.0	Henry
Evans Fork of Billey Fork of Millers Creek*	Mouth to Headwaters	0.0-3.0	Estill
Falling Rock Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-0.7	Breathitt

Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary	0.0 to 2.6	Anderson
Gladie Creek of Red River*	Land Use Change to Long Branch	0.35 to 7.3	Menifee
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek	0.0-9.1	Clay, Leslie
Griers Creek of Kentucky River*	Kentucky River Backwaters to Unidentified Tributary	0.1 to 3.5	Woodford
Grindstone Creek of Kentucky River*	Kentucky River Backwaters to Headwaters	0.1 to 1.9	Franklin
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	0.0-3.25	Powell
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork	0.0-2.1	Leslie
Hines Creek of Kentucky River*	Kentucky River Backwaters to confluence with Unidentified Tributary	0.1 to 1.9	Madison
Honey Branch of Greasy Creek of Middle Fork of Kentucky River*	Mouth to Headwaters	0.0-1.35	Leslie
Hopper Cave Branch of Cavanaugh Creek*	Mouth to Headwaters	0.0-1.8	Jackson
Indian Creek of Eagle Creek*	Mouth to Headwaters	0.0 to 5.4	Carroll
Indian Fork of Sixmile Creek of Kentucky River*	Mouth to Headwaters	0.0-3.3	Shelby
John Carpenter Fork of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-1.2	Breathitt
Katies Creek of Red Bird River	Mouth to Headwaters	0.0-4.0	Clay
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek*	Cortland Fork to Big Branch	0.0-3.75	Owsley
Left Fork of Big Double Creek of Kentucky River*	Mouth to Headwaters	0.0-1.5	Clay
Line Fork of North Fork of Kentucky River*	Defeated Creek to Headwaters	12.2-28.6	Letcher
Little Middle Fork of Elisha Creek of Red Bird River*	Mouth to Headwaters	0.0-0.75	Clay
Little Millseat Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-1.2	Breathitt
Little Sixmile Creek of Sixmile Creek of Kentucky River*	Mouth to Headwaters	0.0-5.3	Henry
Lower Howard Creek of Kentucky River	Mouth to West Fork	0.0-2.7	Clark
Lulbegrud Creek of Red River	Mouth to Falls Branch	0.0-7.3	Clark, Powell
Middle Fork of Kentucky River	Mouth to Upper Twin Creek	0.0-12.7	Lee, Owsley
Middle Fork of Kentucky River*	Hurts Creek to Greasy Creek	75.6-85.8	Leslie
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake	1.8-7.2	Powell
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-0.7	Owsley
Mill Creek of Kentucky River*	Upstream of Mouth to Headwaters	0.5-8.3	Owen
Millseat Branch of Clemons Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-1.85	Breathitt
Muddy Creek of Kentucky River*	Elliston, Kentucky to Viney Creek	13.8-20.65	Madison
Musselman Creek of Eagle Creek*	Mouth to Headwaters	0.0-9.0	Grant
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek	0.0-15.3	Clay
Right Fork of Buffalo Creek of Kentucky River*	Mouth to Headwaters	0.0-11.75	Owsley
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters	0.0-3.3	Leslie
Roaring Fork of Lewis Fork of Buckhorn Creek*	Mouth to Headwaters	0.0-0.9	Breathitt
Rock Lick Creek of South Fork of Station Camp Creek*	Mouth to Headwaters	0.0-9.6	Jackson
Sand Ripple Creek of Kentucky River*	Kentucky River Backwaters to Headwaters	0.1-3.9	Henry
Severn Creek of Kentucky River*	Kentucky River Backwaters to North Fork of Severn Creek	1.35-3.0	Owen
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	0.1-1.4	Mercer
Shelly Rock Fork of Millseat Branch of Clemons Fork*	Mouth to Headwaters	0.0-0.6	Breathitt
Sixmile Creek of Kentucky River*	Little Sixmile Creek to Dam	7.1-15.3	Henry
South Fork of Kentucky River	Mouth to Sexton Creek	0.0-27.8	Owsley
South Fork of Red River	Mouth to Sandlick Fork	0.0-4.2	Powell
South Fork of Station Camp Creek of Kentucky River*	Mouth to Rock Lick Creek	0.0-9.7	Jackson
Spruce Branch of Redbird River*	Mouth to Headwaters	0.0-1.0	Clay
Station Camp Creek of Kentucky River*	Landuse Change to South Fork of Station Camp Creek	18.0-22.8	Estill
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary	0.0-4.2	Fayette

Steer Fork of War Fork of Station Camp Creek*	Mouth to Headwaters	0.0-2.7	Jackson
Sturgeon Creek of Kentucky River*	Duck Fork to Little Sturgeon Creek	1.3-13.7	Lee, Owsley
Sugar Creek of Redbird River*	Landuse Change to Headwaters	0.6-5.4	Leslie
Sulphur Lick Creek of Elkhorn Creek	Mouth to Headwaters	0.0-5.2	Franklin
Unidentified Tributary of Cawood Branch of Beech Fork*	Mouth to Headwaters	0.0-2.1	Leslie
Unidentified Tributary of Cedar Creek of Kentucky River*	Mouth to Headwaters	0.0-1.4	Owen
Unidentified Tributary of Glenns Creek of Kentucky River*	Mouth to Headwaters	0.0 to 1.9	Woodford
Unidentified Tributary of Jacks Creek of Kentucky River*	Mouth to Headwaters	0.0-1.15	Madison
Unidentified Tributary of Kentucky River*	Land Use Change to Headwaters	0.1-1.4	Franklin
Unidentified Tributary of Line Fork of North Fork of Kentucky River* (LCW)	Mouth to Headwaters	0.0-0.6	Letcher
War Fork of Station Camp Creek*	Mouth to Headwaters	0.0-13.8	Jackson
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0.0-1.0	Owsley
Wolfpen Creek of Red River*	Mouth to Headwaters	0.0-3.6	Menifee
SALT RIVER BASIN			
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek	13.0-25.9	Shelby, Spencer
Cedar Creek of Salt River*	Mouth to Greens Branch	0.0-5.2	Bullitt
Chaplin River of Salt River*	Thompson Creek to Cornishville, KY	40.9-54.2	Washington
Doctors Fork of Chaplin River	Mouth to Begley Branch	0.0-3.8	Boyle
Guist Creek of Brashears Creek	Mouth to Jeptha Creek	0.0-15.7	Spencer
Harts Run of Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-1.8	Bullitt
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary	0.0-0.9	Mercer
Lick Creek of Long Lick Creek of Beech Fork of Salt River*	Mouth to 0.1miles below Dam	0.0-4.1	Washington
Otter Creek of Rolling Fork of Salt River*	Landuse Change to confluence of East Fork and Middle Fork Otter Creek	1.7-2.9	Larue
Overalls Creek of Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters of Middle Fork of Overalls Creek	0.0-3.2	Bullitt
Salt Lick Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-8.6	Larue, Marion
Sulphur Creek of Chaplin River*	Mouth to confluence of Cheese Lick and Brush Creek	0.0-10.0	Anderson, Mercer, Washington
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters	0.0-2.3	Washington
West Fork of Otter Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-5.1	Larue
Wilson Creek of Rolling Fork of Salt River*	Mouth to Headwaters	0.0-18.4	Bullitt, Nelson
GREEN RIVER BASIN			
Beaverdam Creek of Green River*	Mouth to Headwaters	0.0-14.5	Edmonson
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	13.0-17.3	Green
Cane Run of Nolin River*	Nolin River Lake Backwaters to Headwaters	0.8-6.5	Hart
Caney Fork of Peter Creek*	Mouth to Headwaters	0.0-6.7	Barren
Clifty Creek of Rough River*	Barton Run to Western Kentucky Parkway	7.3-17.2	Grayson
Clifty Creek of Wolf Lick Creek*	Little Clifty Creek to Sulphur Lick	7.6-13.4	Todd
East Fork of Little Barren River*	Red Lick Creek to Flat Creek	18.9-20.7	Metcalfe
Elk Lick Creek	Duck Lick Creek to Barren Fork Creek and Edger Creek	3.6 to 11.8	Allen
Ellis Fork of Damron Creek*	Mouth to Headwaters	0.0-3.2	Adair, Russell
Falling Timber Creek of Skaggs Creek*	Landuse Change to Headwaters	10.8-15.2	Barren, Metcalfe
Fiddlers Creek of North Fork of Rough River*	Mouth to Headwaters	0.0-5.9	Breckinridge
Forbes Creek of Buck Creek of East Fork of Pond River*	Mouth to Unidentified Tributary	0.0-4.1	Christian
Gasper River of Barren River*	Clear Fork to Wiggington Creek	17.2-35.6	Logan, Warren
Goose Creek of Green River*	Mouth to Little Goose Creek	0.0-8.5	Casey, Russell
Green River	Downstream Mammoth Cave National	185.0-250.3	Edmonson, Hart

	Park Boundary to Lynn Camp Creek		
Halls Creek of Rough River*	Unidentified Tributary to Headwaters	7.15-9.6	Ohio
Lick Creek of West Fork of Drakes Creek*	Mouth to Headwaters	0.0-10.2	Simpson
Linders Creek of Rough River*	Mouth to Sutzer Creek	0.0-7.9	Hardin
Little Beaverdam Creek of Green River*	Mouth to SR 743	0.0-11.65	Edmonson, Warren
Little Short Creek of Rough River*	Mouth to Headwaters	0.0-3.1	Grayson
Lynn Camp Creek of Green River*	Mouth to Lindy Creek	0.0-8.5	Hart
McFarland Creek of West Fork of Pond River*	Grays Branch to Unidentified Tributary	1.5-5.0	Christian
Meeting Creek of Rough River*	Little Meeting Creek to Petty Branch	5.2-14.0	Grayson, Hardin
Muddy Creek of Caney Creek of Rough River*	Landuse Change to Headwaters	13.0-15.5	Ohio
North Fork of Rough River*	Buffalo Creek to Reservoir Dam	22.1-26.9	Breckinridge
Peter Creek of Barren River*	Caney Fork to Dry Fork	11.6-18.5	Barren
Pond Run of Rough River*	Landuse Change to Headwaters	1.4-6.8	Breckinridge, Ohio
Puncheon Creek	Mouth to Tennessee State Line	0.0-3.8	Logan
Rough River*	Linders Creek to Vertrees Creek	138.0-149.4	Hardin
Russell Creek of Green River*	Mouth to Columbia WWTP	0.0-40.0	Green, Adair
Russell Creek of Green River*	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek	56.9-66.3	Adair, Russell
Sixes Creek of Indian Camp Creek*	Wild Branch to Headwaters	2.0-7.5	Ohio
Sulphur Branch of Alexander Creek*	Mouth to Headwaters	0.0-3.0	Edmonson
Thompson Branch of West Fork of Drakes Creek	Webb Branch to Tennessee State Line	0.3-1.5	Simpson
Trammel Creek of Drakes Creek*	Mouth to Tennessee State Line	0.0-30.6	Allen, Warren
Unidentified Tributary of Green River*	Landuse Change to Headwaters	1.7-3.2	Adair
Unidentified Tributary of White Oak Creek*	Hovious Rd Crossing to SR 76	0.4-2.9	Adair
West Fork of Pond River*	Unidentified Tributary to East Branch of Pond River	12.45-22.5	Christian
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek of Cumberland River*	Energy Lake Backwaters to Headwaters	3.0-9.4	Trigg
Donaldson Creek of Cumberland River*	Craig Branch to Unidentified Tributary	3.2-7.2	Trigg
Elk Fork of Red River of Cumberland River*	Tennessee State Line to Dry Branch	7.5-23.1	Todd
Sugar Creek of Cumberland River*	Lick Creek to Unidentified Tributary	2.2-6.9	Livingston
West Fork of Red River of Cumberland River*	Tennessee State Line to Montgomery Creek	16.1-26.5	Christian
Whippoorwill Creek of Red River of Cumberland River*	Mouth to Vicks Branch	0.0-13.2	Logan
TENNESSEE RIVER BASIN			
Blood River of Kentucky Lake (Tennessee River)*	McCullough Fork to Tennessee State Line	15.15-18.7	Calloway
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek	28.7-30.7	Marshall
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)*	Kentucky Lake Backwaters to Headwaters	0.7-2.9	Calloway
Panther Creek of Kentucky Lake (Blood River of Tennessee River)*	Kentucky Lake Backwaters to Headwaters	0.5-5.7	Calloway
Soldier Creek of West Fork of Clarks River*	Mouth to South Fork of Soldier Creek	0.0-5.7	Marshall
Sugar Creek of Kentucky Lake (Tennessee River)*	Kentucky Lake Backwaters to Buzzard Roost Road	2.5-3.2	Calloway
Sugar Creek of West Fork Clarks River*	Mouth to Unnamed Reservoir	0.0-3.9	Graves
Trace Creek of West Fork of Clarks River*	Mouth to Neeley Branch	0.0-3.35	Graves
Unidentified Tributary of Unidentified Tributary of Panther Creek of West Fork of Clarks River*	Mouth to Headwaters	0.0-1.7	Graves
West Fork of Clarks River*	Soldier Creek to Duncan Creek	20.1-23.5	Graves
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)*	Ralph Wright Road Crossing to Headwaters	2.8-6.8	Calloway
TRADEWATER RIVER BASIN			
East Fork of Flynn Fork of Tradewater River*	Landuse Change to Headwaters	2.15-4.6	Caldwell
Piney Creek of Tradewater River*	Lake Beshear Backwaters to Headwaters	4.5-10.2	Caldwell, Christian
Sandlick Creek of	Camp Creek to	4.5-8.6	Chris-

Tradewater River*	Headwaters		tian
Tradewater River*	Dripping Springs Branch to Buntin Lake Dam	126.2-133.9	Christian
Unidentified Tributary of Piney Creek of Tradewater River*	Mouth to Headwaters	0.0-2.9	Caldwell
Unidentified Tributary of Sandlick Creek of Tradewater River*	Mouth to Headwaters	0.0-1.4	Christian
OHIO RIVER BASIN (Minor Tributaries)			
Crooked Creek*	Rush Creek to City Lake Dam	18.1-26.4	Crittenden
Double Lick Creek of Woolper Creek*	Mouth to Headwaters	0.0-3.5	Boone
Garrison Creek*	Mouth to Headwaters	0.0-4.85	Boone
Kinniconick Creek*	McDowell Creek to Headwaters	5.2-50.9	Lewis
Little South Fork of Big South Fork	Land Use Change to Headwaters	1.2-5.8	Boone
Middle Fork of Massac Creek*	Hines Road to Headwaters (Pond)	3.1-6.4	McCracken
Second Creek*	Ohio River Backwaters to Headwaters	0.4-2.9	Boone
Unidentified Tributary of Big Sugar Creek*	I-71 to Headwaters	1.0-1.8	Gallatin
Unidentified Tributary of Corn Creek*	Mouth to Headwaters	0.0-2.3	Trimble
Unidentified Tributary of Massac Creek*	Mouth to Headwaters	0.0-1.7	McCracken
West Fork of Massac Creek*	SR 724 to Little Massac Creek	3.6-6.2	McCracken
Yellowbank Creek*	Ohio River Backwaters to Headwaters	2.0-12.0	Breckinridge
LAKE			
Metropolis	Entire Lake		McCracken
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Jackson Creek*	Mouth to Headwaters	0.0-3.0	Graves
Obion Creek*	Hurricane Creek to Little Creek	26.7-37.1	Hickman
Terrapin Creek*	Tennessee State Line to Confluence of East and West Forks	2.7-6.0	Graves
LAKES			
Murphy's Pond	Entire Pond and Preserve Area		Hickman
Swan	Entire Lake		Ballard
UPPER CUMBERLAND RIVER BASIN			

Bad Branch of Poor Fork of Cumberland River*	Mouth to Headwaters	0.0-3.0	Letcher
Bark Camp Creek of Cumberland River*	Mouth to Martins Fork	0.0-4.0	Whitley
Beaver Creek of Cumberland River*	Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork	2.4-7.1	McCreary
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch	0.0-5.7	Pulaski
Brownies Creek of Cumberland River*	Blacksnake Branch to Headwaters	9.3-16.75	Bell, Harlan
Brush Creek of Roundstone Creek *	Wolf Creek to Reemergence of Sinking Creek	1.1-7.6	Rockcastle
Brushy Creek of Buck Creek*	Mouth to Headwaters	0.0-16.5	Pulaski
Buck Creek of Cumberland River*	0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters	11.7-55.0	Lincoln, Pulaski
Bunches Creek of Cumberland River*	Mouth to confluence of Amos Falls Branch and Seminary Branch	0.0-3.3	Whitley
Cane Creek of Rockcastle River*	Mouth to Headwaters	0.0-11.85	Laurel
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	0.0-2.7	Pulaski
Cogur Fork of Indian Creek*	Mouth to Headwaters	0.0-7.95	McCreary
Cumberland River	Wild River Boundaries	549.65-566.1	McCreary, Whitley
Dog Slaughter Creek of Cumberland River*	Mouth to confluence of North Fork and South Fork of Dog Slaughter Creek	0.05-1.15	Whitley
Eagle Creek of Cumberland River*	Mouth to Headwaters	0.05-6.75	McCreary
Fugitt Creek of Clover Fork of Cumberland River*	Landuse Change to Headwaters	0.5-4.6	Harlan
Horse Lick Creek of Rockcastle River*	Mouth to Clover Bottom	0.0-12.3	Jackson, Rockcastle
Howards Creek of Illwill Creek of Wolf River*	Dale Hollow Reservoir Backwaters to Headwaters	0.6-4.6	Clinton
Indian Creek of Cumberland River*	Laurel Fork to Barren Fork	2.4-6.8	McCreary

Jackie Branch of Bark Camp Creek*	Mouth to Headwaters	0.0-1.65	Whitley
Kilburn Fork of Indian Creek	Mouth to Headwaters	0.0-7.2	McCreary
Laurel Creek of Marsh Creek	Mouth to Laurel Creek Dam	0.0-9.0	McCreary
Laurel Fork of Clear Fork of Cumberland River*	Tennessee State Line to Tiny Branch	4.3-13.1	Whitley
Laurel Fork of Middle Fork of Rockcastle River*	Mouth to Headwaters	0.0-12.3	Jackson
Left Fork of Fugitt Creek of Clover Fork of Cumberland River	Mouth to Headwaters	0.0-1.5	Harlan
Little South Fork of Cumberland River*	Lake Cumberland Backwaters to Langham Branch	4.4-35.5	McCreary, Wayne
Marsh Creek of Cumberland River*	Laurel Creek to Kentucky/Tennessee State Line	8.8-26.5	McCreary
Martins Fork of Cumberland River	Rough Branch to Headwaters	27.2-32.7	Harlan
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch	0.8-6.2	Monroe
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	0.0-2.8	Monroe
Middle Fork of Rockcastle River*	Mouth to confluence of Indian Creek and Laurel Fork	0.0-7.9	Jackson
Mud Camp Creek of Cumberland River*	Mouth to Collins Branch	0.0-1.2	Cumberland
Mud Camp Creek of Cumberland River*	Unidentified Tributary to Headwaters	3.8-8.8	Cumberland, Monroe
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork	14.0-22.1	Wayne
Poor Fork of Cumberland River*	Franks Creek to Headwaters	42.1-52.4	Letcher
Presley House Branch of Poor Fork of Cumberland River*	Mouth to Headwaters	0.0-1.65	Letcher
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-1.85	McCreary
Rock Creek of South Fork of Cumberland River*	White Oak Creek to Tennessee State Line	4.0-21.5	McCreary
Rockcastle River	Wild River Boundaries	8.95-54.7	Laurel, Pulaski
Shillalah Creek of Clear Fork of Yellow Creek*	Mouth to Headwaters	0.0-5.5	Bell
Sinking Creek of Rockcastle River*	Mouth to White Oak Creek	0.0-9.9	Laurel
Sulphur Creek of Wolf River of Obey River*	Dale Hollow Reservoir Backwaters to Headwaters	1.7-5.1	Clinton
South Fork of Dog Slaughter Creek of Cumberland River*	Mouth to Headwaters	0.0-4.6	Whitley
South Fork of Rockcastle River	Mouth to White Oak Creek	0.0-5.8	Laurel
Unidentified Tributary (across from Hemlock Grove) of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-1.3	McCreary
Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-1.2	McCreary
Watts Branch of Rock Creek of South Fork of Cumberland River*	Mouth to Headwaters	0.0-2.6	McCreary
Watts Creek of Cumberland River*	Camp Blanton Reservoir to Headwaters	2.4-4.4	Harlan

~~[Table 2~~ ~~SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER~~			
~~Stream~~	~~Segment~~	~~River Miles~~	~~County~~
~~BIG SANDY RIVER BASIN~~			
~~Hobbs Fork of Pigeonroost Fork of Wolf Creek*~~	~~Mouth to Headwaters~~	~~0.0-3.8~~	~~Martin~~
~~Lower Pigeon Branch of Elkhorn Creek*~~	~~Left Fork to Headwaters~~	~~0.6-1.9~~	~~Pike~~
~~Russell Fork of Levisa Fork of Big Sandy River*~~	~~Clinch Field RR Yard off HWY 80 to Virginia State Line~~	~~14.9-16.5~~	~~Pike~~
~~Toms Branch of Elkhorn Creek*~~	~~Mouth to Headwaters~~	~~0.0-1.6~~	~~Pike~~
~~Unidentified Tributary of Hobbs Fork*~~	~~Hobbs Fork of Pigeonroost Fork to Headwaters~~	~~0.0-0.6~~	~~Martin~~
~~LITTLE SANDY RIVER BASIN~~			
~~Arabs Fork of Big Sinking Creek*~~	~~Clay Fork to Headwaters~~	~~0.0-5.7~~	~~Elliott~~
~~Big Caney Creek*~~	~~Grayson Lake to Headwaters~~	~~0.6 to 13.6~~	~~Elliott, Rowan~~

~~Big Sinking Creek of Little Sandy River~~[2]	~~SR 986 to Clay Fork and Arab Fork~~	~~11.1-15.9~~	~~Carter, Elliott~~
~~Meadow Branch of Little Fork of Little Sandy River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Elliott~~
~~Middle Fork of Little Sandy River~~[2]	~~Mouth to Sheepskin Branch~~	~~0.0-3.4~~	~~Elliott~~
~~Nichols Fork of Little Fork of Little Sandy River~~[2]	~~Green Branch to Headwaters~~	~~0.0-1.6~~	~~Elliott~~
~~Laurel Creek of Little Sandy River~~[2]	~~Carter School Rd Bridge to Headwaters~~	~~7.7-14.7~~	~~Elliott, Rowan~~
~~LICKING RIVER BASIN~~			
~~Blackwater Creek of Licking River~~[2]	~~Eaton Creek to Greasy Fork~~	~~3.2-11.1~~	~~Morgan~~
~~Blanket Creek of Licking River~~	~~Mouth to Unidentified Tributary~~	~~0.0-1.9~~	~~Pendleton~~
~~Botts Fork of Brushy Fork of Licking River~~[2]	~~Mouth to Landuse Change~~	~~0.0-2.2~~	~~Menifee~~
~~Bowman Creek of Licking River~~	~~Mouth to Unidentified Tributary~~	~~0.0-6.0~~	~~Kenton~~
~~Brushy Fork of Meyers Creek~~[2]	~~Cave Run Lake Backwaters to Headwaters~~	~~0.6-5.0~~	~~Menifee~~
~~Brushy Fork of South Fork of Grassy Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-5.8~~	~~Pendleton~~
~~Bucket Branch of North Fork of Licking River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.9~~	~~Morgan~~
~~Cedar Creek of Licking River~~	~~Mouth to North Branch of Cedar Creek~~	~~0.0-1.7~~	~~Robertson~~
~~Craney Creek of Licking River~~	~~Mouth to Headwaters~~	~~0.0-11.2~~	~~Morgan, Rowan~~
~~Devils Fork of North Fork of Licking River~~[2]	~~Mouth to Headwaters~~	~~0.0-8.4~~	~~Elliott, Morgan~~
~~Flour Creek of Licking River~~	~~Mouth to Unidentified Tributary~~	~~0.0-2.2~~	~~Pendleton~~
~~Grovers Creek of Kincaid Creek~~[2]	~~Kincaid Lake Backwaters to Unidentified Tributary~~	~~0.5-3.4~~	~~Bracken, Pendleton~~
~~Licking River~~	~~SR 211 to unnamed Rd off Slatey Point Rd~~	~~159.5-170.6~~	~~Bath, Rowan~~
~~Little South Fork of Big South Fork of Ohio River~~	~~Land Use Change to Headwaters~~	~~1.2 – 5.9~~	~~Boone~~
~~North Fork of Licking River~~[2]	~~Cave Run Lake Backwaters to Devils Fork~~	~~9.9-14.2~~	~~Morgan~~
~~Sawyers Fork of Cruises Creek~~	~~Mouth to Headwaters~~	~~0.0-3.3~~	~~Kenton~~
~~Slabcamp Creek of Craney Creek of Licking River~~	~~Mouth to Headwaters~~	~~0.0-3.7~~	~~Rowan~~
~~Slate Creek of Licking River~~	~~Mouth to Mill Creek~~	~~0.0-13.6~~	~~Bath~~
~~South Fork Grassy Creek of Grassy Creek of Licking River~~[2]	~~Mouth to Greasy Creek~~	~~0.0-19.8~~	~~Kenton, Pendleton~~
~~Unidentified Tributary of Shannon Creek of North Fork of Licking River~~	~~Mouth to Headwaters~~	~~0.0-2.2~~	~~Mason~~
~~Welch Fork of Brushy Fork of Licking River~~[2]	~~Mouth to First Road Crossing~~	~~0.0-1.0~~	~~Menifee~~
~~West Creek of Licking River~~[2]	~~Mouth to Headwaters~~	~~0.0-9.7~~	~~Harrison, Robertson~~
~~KENTUCKY RIVER BASIN~~			
~~Backbone Creek of Sixmile Creek of Kentucky River~~	~~Mouth to Scrabble Creek~~	~~0.0-1.7~~	~~Franklin, Henry, Shelby~~
~~Bear Branch of North Fork of Kentucky River~~	~~Above Sediment Pond to Headwaters~~	~~0.3-1.2~~	~~Perry~~
~~Big Double Creek of Red Bird River~~[2]	~~Mouth to Headwaters~~	~~0.0-4.4~~	~~Clay~~
~~Bill Branch of Laurel Fork of Greasy Creek~~[2]	~~Mouth to Right Fork and Left Fork Creek~~	~~0.0-0.3~~	~~Leslie~~
~~Billey Fork of Millers Creek~~	~~Land Use Change to Headwaters~~	~~2.6-8.8~~	~~Lee, Elliott~~
~~Bill Oak Branch of Left Fork of Buffalo Creek~~	~~Mouth to Headwaters~~	~~0.0-0.6~~	~~Owsley~~
~~Buffalo Creek of South Fork of Kentucky River~~[2]	~~Mouth to Right Fork and Left Fork~~	~~0.0-1.6~~	~~Owsley~~
~~Cavanaugh Creek~~[2]	~~South Fork of Station Camp Creek to Foxtown Rd~~	~~0.0-5.1~~	~~Jackson~~
~~Cherry Run of Boyd Run of North Elkhorn Creek~~	~~Mouth to Boyd Run~~	~~0.0-0.9~~	~~Scott~~
~~Chester Creek of Middle Fork of Red River~~[2]	~~Mouth to Headwaters~~	~~0.0-2.8~~	~~Wolfe~~
~~Clear Creek of Kentucky River~~[2]	~~Mouth to East Fork Clear Creek~~	~~0.0-9.0~~	~~Woodford~~
~~Clemons Fork of Buckhorn Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-4.8~~	~~Breathitt~~
~~Coles Fork of Buckhorn Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-6.3~~	~~Breathitt~~

~~Craig Creek of Kentucky River~~[2]	~~Mouth to Unidentified Tributary~~	~~0.0-2.7~~	~~Woodford~~
~~Deep Ford Branch of Cutshin Creek~~	~~Above Pond to Headwaters~~	~~0.3-1.3~~	~~Leslie~~
~~Drennon Creek of Kentucky River~~[2]	~~Fivemile Creek to Town Branch~~	~~8.7-12.2~~	~~Henry~~
~~East Fork of Indian Creek of Indian Creek of Red River River~~[2]	~~West Fork of Indian Creek to Headwaters~~	~~0.0-9.1~~	~~Menifee~~
~~Elisha Creek of Red Bird River~~[2]	~~Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek~~	~~0.8-1.8~~	~~Leslie~~
~~Emily Run of Drennon Creek~~	~~Mouth to Unidentified Tributary~~	~~0.0-3.0~~	~~Henry~~
~~Evans Fork of Billey Fork of Millers Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-3.0~~	~~Estill~~
~~Falling Rock Branch of Clemons Fork of Buckhorn Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-0.7~~	~~Breathitt~~
~~Gilberts Creek of Kentucky River~~	~~Mouth to Unidentified Tributary~~	~~0.0 to 2.6~~	~~Anderson~~
~~Gladie Creek of Red River~~[2]	~~Land Use Change to Long Branch~~	~~0.35 to 7.3~~	~~Menifee~~
~~Goose Creek of South Fork of Kentucky River~~	~~Mouth to Laurel Creek~~	~~0.0-9.1~~	~~Clay, Leslie~~
~~Griers Creek of Kentucky River~~[2]	~~Kentucky River Backwaters to Unidentified Tributary~~	~~0.1 to 3.5~~	~~Woodford~~
~~Grindstone Creek of Kentucky River~~[2]	~~Kentucky River Backwaters to Headwaters~~	~~0.1 to 1.9~~	~~Franklin~~
~~Hardwick Creek of Red River~~	~~Mouth to Little Hardwick Creek~~	~~0.0-3.2~~	~~Powell~~
~~Hell For Certain of Middle Fork of Red River~~	~~Mouth to Big Fork~~	~~0.0-2.1~~	~~Leslie~~
~~Hines Creek of Kentucky River~~[2]	~~Kentucky River Backwaters to confluence with Unidentified Tributary~~	~~0.1 to 1.9~~	~~Madison~~
~~Honey Branch of Greasy Creek of Middle Fork of Kentucky River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Leslie~~
~~Hopper Cave Branch of Cavanaugh Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-1.8~~	~~Jackson~~
~~Indian Creek of Eagle Creek~~[2]	~~Mouth to Headwaters~~	~~0.0 to 5.4~~	~~Carroll~~
~~Indian Fork of Sixmile Creek of Kentucky River~~[2]	~~Mouth to Headwaters~~	~~0.0-3.3~~	~~Shelby~~
~~John Carpenter Fork of Clemons Fork of Buckhorn Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-1.2~~	~~Breathitt~~
~~Katies Creek of Red Bird River~~	~~Mouth to Headwaters~~	~~0.0-4.0~~	~~Clay~~
~~Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek~~	~~Cortland Fork to Big Branch~~	~~2.1-3.8~~	~~Owsley~~
~~Left Fork of Big Double Creek of Kentucky River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.5~~	~~Clay~~
~~Line Fork of North Fork of Kentucky River~~[2]	~~Defeated Creek to Headwaters~~	~~12.2-28.7~~	~~Letcher~~
~~Little Middle Fork of Elisha Creek of Red Bird River~~	~~Mouth to Headwaters~~	~~0.0-0.75~~	~~Clay~~
~~Little Millseat Branch of Clemons Fork of Buckhorn Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-1.2~~	~~Breathitt~~
~~Little Sixmile Creek of Sixmile Creek of Kentucky River~~[2]	~~Mouth to Headwaters~~	~~0.0-5.3~~	~~Henry~~
~~Lower Howard Creek of Kentucky River~~	~~Mouth to West Fork~~	~~0.0-2.7~~	~~Clark~~
~~Lulbegrud Creek of Red River~~	~~Mouth to Falls Branch~~	~~0.0-7.3~~	~~Clark, Powell~~
~~Middle Fork of Kentucky River~~	~~Mouth to Upper Twin Creek~~	~~0.0-12.7~~	~~Lee, Owsley~~
~~Middle Fork of Kentucky River~~[2]	~~Hurts Creek to Greasy Creek~~	~~73.7-84.0~~	~~Leslie~~
~~Middle Fork of Red River~~	~~South Fork of Red River to Natural Bridge State Park Lake~~	~~1.8-8.3~~	~~Powell~~
~~Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek~~	~~Mouth to Headwaters~~	~~0.0-0.7~~	~~Owsley~~
~~Mill Creek of Kentucky River~~[2]	~~Upstream of Mouth to Headwaters~~	~~0.5-8.3~~	~~Owen~~
~~Millseat Branch of Clemons Fork of Buckhorn Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-1.9~~	~~Breathitt~~
~~Muddy Creek of Kentucky River~~[2]	~~Elliston, Kentucky to Viney Creek~~	~~13.5-20.7~~	~~Madison~~
~~Musselman Creek of Eagle Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-9.0~~	~~Grant~~
~~Red Bird River of South Fork of Kentucky River~~	~~Mouth to Big Creek~~	~~0.0-15.3~~	~~Clay~~
~~Right Fork of Buffalo Creek [illegible] Kentucky River~~[2]	~~Mouth to Headwaters~~	~~0.0-11.75~~	~~Owsley~~
~~Right Fork of Elisha Creek [illegible] Redbird~~	~~Mouth to Headwaters~~	~~0.0-3.3~~	~~Leslie~~

~~River~~			
~~Roaring Fork of Lewis Fork of Buckhorn Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-0.9~~	~~Breathitt~~
~~Rock Lick Creek of South Fork of Station Camp Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-9.6~~	~~Jackson~~
~~Sand Ripple Creek of Kentucky River~~[2]	~~Kentucky River Backwaters to Headwaters~~	~~0.1-3.9~~	~~Henry~~
~~Severn Creek of Kentucky River~~[2]	~~Kentucky River Backwaters to North Fork of Severn Creek~~	~~1.35-3.0~~	~~Owen~~
~~Shaker Creek of Kentucky River~~	~~Near Mouth to Shawnee Run~~	~~0.1-1.4~~	~~Mercer~~
~~Shelly Rock Fork of Millseat Branch of Clemons Fork~~[2]	~~Mouth to Headwaters~~	~~0.0-0.6~~	~~Breathitt~~
~~Sixmile Creek of Kentucky River~~[2]	~~Little Sixmile Creek to Dam~~	~~6.9-15.2~~	~~Henry~~
~~South Fork of Kentucky River~~	~~Mouth to Sexton Creek~~	~~0.0-27.9~~	~~Owsley~~
~~South Fork of Red River~~	~~Mouth to Sandlick Fork~~	~~0.0-4.3~~	~~Powell~~
~~South Fork of Station Camp Creek of Kentucky River~~[2]	~~Mouth to Rock Lick Creek~~	~~0.0-9.7~~	~~Jackson~~
~~Spruce Branch of Redbird River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.1~~	~~Clay~~
~~Station Camp Creek of Kentucky River~~[2]	~~Landuse Change to South Fork of Station Camp Creek~~	~~18.0-22.8~~	~~Estill~~
~~Steeles Run of Elkhorn Creek~~	~~Mouth to Unidentified Tributary~~	~~0.0-4.2~~	~~Fayette~~
~~Steer Fork of War Fork of Station Camp Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-2.7~~	~~Jackson~~
~~Sturgeon Creek of Kentucky River~~[2]	~~Duck Fork to Little Sturgeon Creek~~	~~1.3-13.7~~	~~Lee, Owsley~~
~~Sugar Creek of Redbird River~~[2]	~~Landuse Change to Headwaters~~	~~0.6-5.4~~	~~Leslie~~
~~Sulphur Creek of Elkhorn Creek~~	~~Mouth to Headwaters~~	~~0.0-5.2~~	~~Franklin~~
~~Unidentified Tributary of Cawood Branch of Beech Fork~~[2]	~~Mouth to Headwaters~~	~~0.0-2.1~~	~~Leslie~~
~~Unidentified Tributary of Cedar Creek of Kentucky River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Owen~~
~~Unidentified Tributary of Glenns Creek of Kentucky River~~[2]	~~Mouth to Headwaters~~	~~0.0 to 1.9~~	~~Woodford~~
~~Unidentified Tributary of Jacks Creek of Kentucky River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.15~~	~~Madison~~
~~Unidentified Tributary of Kentucky River~~[2]	~~Land Use Change to Headwaters~~	~~0.1-1.4~~	~~Franklin~~
~~Unidentified Tributary of Line Fork of North Fork of Kentucky River~~[2] ~~(LCW)~~	~~Mouth to Headwaters~~	~~0.0-0.6~~	~~Letcher~~
~~War Fork of Station Camp Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-13.9~~	~~Jackson~~
~~Watches Fork of Laurel Fork of Left Fork of Buffalo Creek~~	~~Mouth to Headwaters~~	~~0.0-0.9~~	~~Owsley~~
~~Wolfpen Creek of Red River~~[2]	~~Mouth to Headwaters~~	~~0.0-3.2~~	~~Menifee~~
~~SALT RIVER BASIN~~			
~~Brashears Creek of Salt River~~	~~Guist Creek to Bullskin and Clear Creek~~	~~13.0-25.9~~	~~Shelby, Spencer~~
~~Cedar Creek of Salt River~~[2]	~~Mouth to Greens Branch~~	~~0.0-5.2~~	~~Bullitt~~
~~Chaplin River of Salt River~~[2]	~~Thompson Creek to Cornishville, KY~~	~~40.9-54.2~~	~~Washington~~
~~Doctors Fork of Chaplin River~~	~~Mouth to Begley Branch~~	~~0.0-3.8~~	~~Boyle~~
~~Guist Creek of Brashears Creek~~	~~Mouth to Jeptha Creek~~	~~0.0-15.7~~	~~Spencer~~
~~Harts Run of Wilson Creek of Rolling Fork of Salt River~~[2]	~~Mouth to Headwaters~~	~~0.0-2.4~~	~~Bullitt~~
~~Indian Creek of Thompson Creek of Chaplin River of Salt River~~	~~Mouth to Unidentified Tributary~~	~~0.0-0.9~~	~~Mercer~~
~~Lick Creek of Long Lick Creek of Beech Fork of Salt River~~	~~Mouth to 0.1miles below Dam~~	~~0.0-4.1~~	~~Washington~~
~~Otter Creek of Rolling Fork of Salt River~~[2]	~~Landuse Change to confluence of East Fork and Middle Fork Otter Creek~~	~~1.7-2.7~~	~~Larue~~
~~Overalls Creek of Wilson Creek of Rolling Fork of Salt River~~[2]	~~Mouth to Headwaters of Middle Fork of Overalls Creek~~	~~0.0-3.0~~	~~Bullitt~~
~~Salt Lick Creek of Rolling Fork of Salt River~~[2]	~~Mouth to Headwaters~~	~~0.0-8.7~~	~~Larue, Marion~~
~~Sulphur Creek of Chaplin River~~[2]	~~Mouth to confluence of Cheese Lick and Brush Creek~~	~~0.0-10.0~~	~~Anderson, Mercer, Washington~~
~~Unidentified Tributary of Glens Creek of Chaplin River~~	~~Mouth to Headwaters~~	~~0.0-2.3~~	~~Washington~~

~~West Fork of Otter Creek of Rolling Fork of Salt River~~[2]	~~Mouth to Headwaters~~	~~0.0-5.4~~	~~Larue~~
~~Wilson Creek of Rolling Fork of Salt River~~[2]	~~Mouth to Headwaters~~	~~0.0-18.4~~	~~Bullitt, Nelson~~
~~GREEN RIVER BASIN~~			
~~Beaverdam Creek of Green River~~[2]	~~Mouth to Headwaters~~	~~0.0-14.5~~	~~Edmonson~~
~~Big Brush Creek of Green River~~	~~Brush Creek to Poplar Grove Branch~~	~~13.0 to 17.4~~	~~Green~~
~~Cane Run of Nolin River~~[2]	~~Nolin River Lake Backwaters to Headwaters~~	~~1.0-6.6~~	~~Hart~~
~~Caney Fork of Peter Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-6.7~~	~~Barren~~
~~Clifty Creek of Rough River~~[2]	~~Barton Run to Western Kentucky Parkway~~	~~7.3-17.2~~	~~Grayson~~
~~Clifty Creek of Wolf Lick Creek~~[2]	~~Little Clifty Creek to Sulphur Lick~~	~~7.6-13.4~~	~~Todd~~
~~East Fork of Little Barren River~~[2]	~~Red Lick Creek to Flat Creek~~	~~19.3-20.6~~	~~Metcalfe~~
~~Elk Lick Creek~~	~~Duck Lick Creek to Barren Fork Creek and Edger Creek~~	~~3.6 to 11.8~~	~~Allen~~
~~Ellis Fork of Damron Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-3.2~~	~~Adair, Russell~~
~~Falling Timber Creek of Skaggs Creek~~[2]	~~Landuse Change to Headwaters~~	~~8.0-15.2~~	~~Barren, Metcalfe~~
~~Fiddlers Creek of North Fork of Rough River~~[2]	~~Mouth to Headwaters~~	~~0.0-6.0~~	~~Breckinridge~~
~~Forbes Creek of Buck Creek of East Fork of Pond River~~[2]	~~Mouth to Unidentified Tributary~~	~~0.0-4.4~~	~~Christian~~
~~Gasper River of Barren River~~[2]	~~Clear Fork to Wiggington Creek~~	~~17.2-35.6~~	~~Logan, Warren~~
~~Goose Creek of Green River~~[2]	~~Mouth to Little Goose Creek~~	~~0.0-8.4~~	~~Casey, Russell~~
~~Green River~~	~~Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek~~	~~183.7-250.3~~	~~Edmonson, Hart~~
~~Halls Creek of Rough River~~[2]	~~Unidentified Tributary to Headwaters~~	~~7.1-9.7~~	~~Ohio~~
~~Lick Creek of West Fork of Drakes Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-10.2~~	~~Simpson~~
~~Linders Creek of Rough River~~[2]	~~Mouth to Sutzer Creek~~	~~0.0-8.0~~	~~Hardin~~
~~Little Beaverdam Creek of Green River~~[2]	~~Mouth to SR 743~~	~~0.0-11.7~~	~~Edmonson, Warren~~
~~Little Short Creek of Rough River~~[2]	~~Mouth to Headwaters~~	~~0.0-3.3~~	~~Grayson~~
~~Lynn Camp Creek of Green River~~[2]	~~Mouth to Lindy Creek~~	~~0.0-8.5~~	~~Hart~~
~~McFarland Creek of West Fork of Pond River~~[2]	~~Grays Branch to Unidentified Tributary~~	~~1.5-5.8~~	~~Christian~~
~~Meeting Creek of Rough River~~[2]	~~Little Meeting Creek to Petty Branch~~	~~5.2-13.8~~	~~Grayson, Hardin~~
~~Muddy Creek of Caney Creek of Rough River~~[2]	~~Landuse Change to Headwaters~~	~~13.0-15.5~~	~~Ohio~~
~~North Fork of Rough River~~[2]	~~Buffalo Creek to Reservoir Dam~~	~~23.4-28.1~~	~~Breckinridge~~
~~Peter Creek of Barren River~~[2]	~~Caney Fork to Dry Fork~~	~~11.5-18.4~~	~~Barren~~
~~Pond Run of Rough River~~[2]	~~Landuse Change to Headwaters~~	~~1.4-6.8~~	~~Breckinridge, Ohio~~
~~Puncheon Creek~~	~~Mouth to Tennessee State Line~~	~~0.0 to 4.3~~	~~Logan~~
~~Rough River~~[2]	~~Linders Creek to Vertrees Creek~~	~~138.0-149.4~~	~~Hardin~~
~~Russell Creek of Green River~~[2]	~~Mouth to Columbia WWTP~~	~~0.0-40.9~~	~~Green, Adair~~
~~Russell Creek of Green River~~[2]	~~Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek~~	~~56.8-66.3~~	~~Adair, Russell~~
~~Sixes Creek of Indian Camp Creek~~[2]	~~Wild Branch to Headwaters~~	~~1.9-7.6~~	~~Ohio~~
~~Sulphur Branch of Alexander Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-3.0~~	~~Edmonson~~
~~Thompson Branch of West Fork of Drakes Creek~~	~~Webb Branch to Tennessee State Line~~	~~0.3-1.5~~	~~Simpson~~
~~Trammel Fork of Drakes Creek~~[2]	~~Mouth to Tennessee State Line~~	~~0.0-30.6~~	~~Allen, Warren~~
~~Unidentified Tributary of Green River~~[2]	~~Landuse Change to Headwaters~~	~~1.0-3.3~~	~~Adair~~
~~Unidentified Tributary of White Oak Creek~~[2]	~~Hovious Rd Crossing to SR 76~~	~~0.4-2.9~~	~~Adair~~
~~West Fork of Pond River~~[2]	~~Unidentified Tributary to East Branch of Pond River~~	~~12.4-22.5~~	~~Christian~~
~~LOWER CUMBERLAND RIVER BASIN~~			
~~Crooked Creek of Cumberland River~~[2]	~~Energy Lake Backwaters to Headwaters~~	~~3.0-9.4~~	~~Trigg~~
~~Donaldson Creek of Cumberland River~~[2]	~~Craig Branch to Unidentified Tributary~~	~~3.2-7.2~~	~~Trigg~~
~~Elk Creek of Red River of Cumberland River~~[2]	~~Tennessee State Line to Dry Branch~~	~~7.5-22.3~~	~~Todd~~

~~Sugar Creek of Cumberland River~~	~~Lick Creek to Unidentified Tributary~~	~~2.2-6.9~~	~~Livingston~~
~~West Fork of Red River of Cumberland River~~	~~Tennessee State Line to Montgomery Creek~~	~~16.1-26.5~~	~~Christian~~
~~Whippoorwill Creek of Red River of Cumberland River~~	~~Mouth to Vicks Branch~~	~~0.0-13.2~~	~~Logan~~
~~TENNESSEE RIVER BASIN~~			
~~Blood River of Kentucky Lake (Tennessee River)~~	~~McCullough Fork to Tennessee State Line~~	~~12.5-16.0~~	~~Calloway~~
~~Clarks River of Tennessee River~~	~~Persimmon Slough to Middle Fork Creek~~	~~28.7-30.7~~	~~Marshall~~
~~Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)~~	~~Kentucky Lake Backwaters to Headwaters~~	~~0.6-2.9~~	~~Calloway~~
~~Panther Creek of Kentucky Lake (Blood River of Tennessee River)~~	~~Kentucky Lake Backwaters to Headwaters~~	~~0.5-5.7~~	~~Calloway~~
~~Soldier Creek of West Fork of Clarks River~~	~~Mouth to South Fork of Soldier Creek~~	~~0.0-5.7~~	~~Marshall~~
~~Sugar Creek of Kentucky Lake (Tennessee River)~~	~~Kentucky Lake Backwaters to Buzzard Roost Road~~	~~1.9-3.1~~	~~Calloway~~
~~Sugar Creek of West Fork Clarks River~~	~~Mouth to Unnamed Reservoir~~	~~0.0-4.2~~	~~Graves~~
~~Trace Creek of West Fork of Clarks River~~	~~Mouth to Neeley Branch~~	~~0.0-3.3~~	~~Graves~~
~~Unidentified Tributary of Panther Creek of West Fork of Clarks River~~	~~Mouth to Headwaters~~	~~0.0-2.1~~	~~Graves~~
~~West Fork of Clarks River~~	~~Soldier Creek to Duncan Creek~~	~~20.1-23.4~~	~~Graves~~
~~Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)~~	~~Ralph Wright Road Crossing to Headwaters~~	~~3.1-6.3~~	~~Calloway~~
~~TRADEWATER RIVER BASIN~~			
~~East Fork of Flynn Fork of Tradewater River~~	~~Landuse Change to Headwaters~~	~~2.1-4.6~~	~~Caldwell~~
~~Piney Creek of Tradewater River~~	~~Lake Beshear Backwaters to Headwaters~~	~~4.5-10.2~~	~~Caldwell, Christian~~
~~Sandlick Creek of Tradewater River~~	~~Camp Creek to Headwaters~~	~~4.9-8.6~~	~~Christian~~
~~Tradewater River~~	~~Dripping Springs Branch to Buntin Lake Dam~~	~~123.2-131.1~~	~~Christian~~
~~Unidentified Tributary of Piney Creek of Tradewater River~~	~~Mouth to Headwaters~~	~~0.0-2.7~~	~~Caldwell~~
~~Unidentified Tributary of Sandlick Creek of Tradewater River~~	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Christian~~
~~OHIO RIVER BASIN (Minor Tributaries)~~			
~~Crooked Creek~~	~~Rush Creek to City Lake Dam~~	~~18.0-26.4~~	~~Crittenden~~
~~Double Lick Creek of Woolper Creek~~	~~Mouth to Headwaters~~	~~0.0-3.4~~	~~Boone~~
~~Garrison Creek~~	~~Mouth to Headwaters~~	~~0.0-4.85~~	~~Boone~~
~~Kinniconick Creek~~	~~McDowell Creek to Headwaters~~	~~5.0-50.9~~	~~Lewis~~
~~Little South Fork of Big South Fork~~	~~Land Use Change to Headwaters~~	~~1.2-5.9~~	~~Boone~~
~~Middle Fork of Massac Creek~~	~~Hines Road to Headwaters~~	~~3.1-6.4~~	~~McCracken~~
~~Second Creek~~	~~Ohio River Backwaters to Headwaters~~	~~0.4-1.4~~	~~Boone~~
~~Unidentified Tributary of Big Sugar Creek~~	~~I-71 to Headwaters~~	~~1.0-1.8~~	~~Gallatin~~
~~Unidentified Tributary of Corn Creek~~	~~Mouth to Headwaters~~	~~0.0-2.0~~	~~Trimble~~
~~Unidentified Tributary of Massac Creek~~	~~Mouth to Headwaters~~	~~0.0-1.7~~	~~McCracken~~
~~West Fork of Massac Creek~~	~~SR 725 to Little Massac Creek~~	~~3.6-6.2~~	~~McCracken~~
~~Yellowbank Creek~~	~~Ohio River Backwaters to Headwaters~~	~~1.5-12.0~~	~~Breckinridge~~
~~LAKE~~			
~~Metropolis~~	~~Entire Lake~~	~~-~~	~~McCracken~~
~~MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)~~			
~~Jackson Creek~~	~~Mouth to Headwaters~~	~~0.0-2.6~~	~~Graves~~
~~Obion Creek~~	~~Hurricane Creek to Little Creek~~	~~25.2-35.5~~	~~Hickman~~
~~Terrapin Creek~~	~~Tennessee State Line to Headwaters~~	~~2.8-7.0~~	~~Graves~~
~~LAKES~~			
~~Murphy's Pond~~	~~Entire Pond and Preserve Area~~	~~-~~	~~Hickman~~
~~Swan~~	~~Entire Lake~~		~~Ballard~~

~~UPPER CUMBERLAND RIVER BASIN~~			
~~Bad Branch of Poor Fork of Cumberland River~~[2]	~~Mouth to Headwaters~~	~~0.0-3.0~~	~~Letcher~~
~~Bark Camp Creek of Cumberland River~~[2]	~~Mouth to Martins Fork~~	~~0.0-4.0~~	~~Whitley~~
~~Beaver Creek of Cumberland River~~[2]	~~Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork~~	~~2.0-6.5~~	~~McCreary~~
~~Bee Lick Creek of Brushy Creek of Buck Creek~~	~~Mouth to Warren Branch~~	~~0.0-5.7~~	~~Pulaski~~
~~Brownies Creek of Cumberland River~~[2]	~~Blacksnake Branch to Headwaters~~	~~9.3-16.7~~	~~Bell, Harlan~~
~~Brush Creek of Roundstone Creek~~	~~Wolf Creek to Reemergence of Sinking Creek~~	~~1.1-7.6~~	~~Rockcastle~~
~~Brushy Creek of Buck Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-16.5~~	~~Pulaski~~
~~Buck Creek of Cumberland River~~[2]	~~0.8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters~~	~~8.3-63.3~~	~~Lincoln, Pulaski~~
~~Bunches Creek of Cumberland River~~[2]	~~Mouth to confluence of Amos Falls Branch and Seminary Branch~~	~~0.0-3.5~~	~~Whitley~~
~~Cane Creek of Rockcastle River~~[2]	~~Mouth to Headwaters~~	~~0.0-11.9~~	~~Laurel~~
~~Clifty Creek of Brushy Creek of Buck Creek~~	~~Mouth to Rocky Branch~~	~~0.0-2.7~~	~~Pulaski~~
~~Cogur Fork of Indian Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-7.9~~	~~McCreary~~
~~Cumberland River~~	~~Wild River Boundaries~~	~~558.5-575.1~~	~~McCreary, Whitley~~
~~Dog Slaughter Creek of Cumberland River~~[2]	~~Mouth to confluence of North Fork and South Fork of Dog Slaughter Creek~~	~~0.0-1.1~~	~~Whitley~~
~~Eagle Creek of Cumberland River~~[2]	~~Mouth to Headwaters~~	~~0.0-6.7~~	~~McCreary~~
~~Fugitt Creek of Clover Fork of Cumberland River~~[2]	~~Landuse Change to Headwaters~~	~~0.5-4.6~~	~~Harlan~~
~~Horse Lick Creek of Rockcastle River~~[2]	~~Mouth to Clover Bottom~~	~~0.0-12.4~~	~~Jackson, Rockcastle~~
~~Howards Creek of Illwill Creek of Wolf River~~[2]	~~Dale Hollow Reservoir Backwaters to Headwaters~~	~~0.6-4.6~~	~~Clinton~~
~~Indian Creek of Cumberland River~~[2]	~~Laurel Fork to Barren Fork~~	~~2.3-6.8~~	~~McCreary~~
~~Jackie Branch of Bark Camp Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-1.7~~	~~Whitley~~
~~Kilburn Fork of Indian Creek~~	~~Mouth to Headwaters~~	~~0.0-7.2~~	~~McCreary~~
~~Laurel Creek of Marsh Creek~~	~~Mouth to Laurel Creek Dam~~	~~0.0-9.0~~	~~McCreary~~
~~Laurel Fork of Clear Fork of Cumberland River~~[2]	~~Tennessee State Line to Tiny Branch~~	~~4.7-13.1~~	~~Whitley~~
~~Laurel Fork of Middle Fork of Rockcastle River~~[2]	~~Mouth to Headwaters~~	~~0.0-12.4~~	~~Jackson~~
~~Left Fork of Fugitt Creek of Clover Fork of Cumberland River~~	~~Mouth to Headwaters~~	~~0.0-1.5~~	~~Harlan~~
~~Little South Fork of Cumberland River~~[2]	~~Lake Cumberland Backwaters to Langham Branch~~	~~2.7-35.6~~	~~McCreary, Wayne~~
~~Marsh Creek of Cumberland River~~[2]	~~Laurel Creek to Headwaters~~	~~8.8-26.3~~	~~McCreary~~
~~Martins Fork of Cumberland River~~	~~Rough Branch to Headwaters~~	~~27.3-37.3~~	~~Harlan~~
~~McFarland Creek of Cumberland River~~	~~Little McFarland Creek to Spring Branch~~	~~0.8-6.2~~	~~Monroe~~
~~Meshack Creek of Cumberland River~~	~~Mouth to Pitcock Branch~~	~~0.0-2.8~~	~~Monroe~~
~~Middle Fork of Rockcastle River~~[2]	~~Mouth to confluence of Indian Creek and Laurel Fork~~	~~0.0-7.9~~	~~Jackson~~
~~Mud Camp Creek of Cumberland River~~[2]	~~Mouth to Collins Branch~~	~~0.0-1.2~~	~~Cumberland~~
~~Mud Camp Creek of Cumberland River~~[2]	~~Unidentified Tributary to Headwaters~~	~~3.8-8.8~~	~~Cumberland, Monroe~~
~~Otter Creek of Cumberland River~~	~~Lake Cumberland Backwaters to Carpenter Fork~~	~~15.6-24.3~~	~~Wayne~~
~~Poor Fork of Cumberland River~~[2]	~~Franks Creek to Headwaters~~	~~41.4-51.7~~	~~Letcher~~
~~Presley House Branch of Poor Fork of Cumberland River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.5~~	~~Letcher~~
~~Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River~~[2]	~~Mouth to Headwaters~~	~~0.0-1.9~~	~~McCreary~~
~~Rock Creek of South Fork of Cumberland River~~[2]	~~White Oak Creek to Tennessee State Line~~	~~4.1-21.6~~	~~McCreary~~
~~Rockcastle River~~	~~Wild River Boundaries~~	~~8.8-24.8~~	~~Laurel, Pulaski~~
~~Shillalah Creek of Clear Fork of Yellow Creek~~[2]	~~Mouth to Headwaters~~	~~0.0-5.5~~	~~Bell~~

~~Sinking Creek of Rockcastle River*~~	~~Mouth to White Oak Creek~~	~~0.0-9.9~~	~~Laurel~~
~~Sulphur Creek of Wolf River of Obey River*~~	~~Dale Hollow Reservoir Backwaters to Headwaters~~	~~1.4-5.1~~	~~Clinton~~
~~South Fork of Dog Slaughter Creek of Cumberland River*~~	~~Mouth to Headwaters~~	~~0.0-4.6~~	~~Whitley~~
~~South Fork of Rockcastle River~~	~~Mouth to White Oak Creek~~	~~0.0-5.8~~	~~Laurel~~
~~Unidentified Tributary (across from Hemlock Grove) of Rock Creek of South Fork of Cumberland River*~~	~~Mouth to Headwaters~~	~~0.0-1.9~~	~~McCreary~~
~~Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of South Fork of Cumberland River*~~	~~Mouth to Headwaters~~	~~0.0-1.15~~	~~McCreary~~
~~Watts Branch of Rock Creek of South Fork of Cumberland River*~~	~~Mouth to Headwaters~~	~~0.0-2.6~~	~~McCreary~~
~~Watts Creek of Cumberland River*~~	~~Camp Blanton Reservoir to Headwaters~~	~~2.2-4.4~~	~~Harlan]~~

~~[Table 2~~ ~~SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER~~			
~~Stream~~	~~Segment~~	~~River Miles~~	~~County~~
~~BIG SANDY RIVER BASIN~~			
~~Hobbs Fork*~~	~~Mouth to Headwaters~~	~~0.0-3.8~~	~~Martin~~
~~Hobbs Fork Unidentified Tributary*~~	~~Hobbs Fork to Headwaters~~	~~0.0-0.55~~	~~Martin~~
~~Lower Pigeon Branch*~~	~~Left Fork to Headwaters~~	~~0.5-1.7~~	~~Pike~~
~~Russell Fork*~~	~~Clinch Field RR Yard off HWY 80 to Virginia Stateline~~	~~14.4-16~~	~~Pike~~
~~Toms Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Pike~~
~~LITTLE SANDY RIVER BASIN~~			
~~Arabs Fork*~~	~~Clay Fork to Headwaters~~	~~0.0-4.7~~	~~Carter~~
~~Big Caney Creek*~~	~~Grayson Lake to Headwaters~~	~~0.0-14.9~~	~~Elliott~~
~~Big Sinking Creek*~~	~~SR 986 to Clay Fork and Arab Fork~~	~~10.7-15.2~~	~~Carter~~
~~Meadow Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Elliott~~
~~Middle Fork Little Sandy River*~~	~~Mouth to Sheepskin Branch~~	~~0.0-3.6~~	~~Elliott~~
~~Nichols Fork*~~	~~Green Branch to Headwaters~~	~~0.0-1.9~~	~~Elliott~~
~~Laurel Creek*~~	~~Carter School Rd Bridge to Headwaters~~	~~7.6-14.4~~	~~Elliott~~
~~LICKING RIVER BASIN~~			
~~Blackwater Creek*~~	~~Eaton Creek to Greasy Fork~~	~~3.8-11.4~~	~~Morgan~~
~~Botts Fork~~	~~Mouth to Landuse Change~~	~~0.0-2.1~~	~~Menifee~~
~~Brushy Fork~~	~~Cave Run Lake Backwaters to Headwaters~~	~~0.6-5.0~~	~~Menifee~~
~~Brushy Fork*~~	~~Mouth to Headwaters~~	~~0.0-5.7~~	~~Pendleton~~
~~Bucket Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.9~~	~~Morgan~~
~~Craney Creek~~	~~Mouth to Headwaters~~	~~0.0-10.0~~	~~Rowan~~
~~Devils Fork*~~	~~Mouth to Headwaters~~	~~0.0-7.8~~	~~Morgan~~
~~Grovers Creek*~~	~~Kincaid Lake Backwaters to Unidentified Tributary~~	~~0.5-3.4~~	~~Pendleton~~
~~Licking River~~	~~SR 211 to unnamed Rd off Slatey Point Rd~~	~~154.5-165.0~~	~~Bath/Rowan~~
~~North Fork of Licking River*~~	~~Cave Run Lake Backwaters to Devils Fork~~	~~9.9-14.2~~	~~Morgan~~
~~Slabcamp Creek~~	~~Mouth to Headwaters~~	~~0.0-3.4~~	~~Rowan~~
~~South Fork Grassy Creek*~~	~~Mouth to Greasy Creek~~	~~0.0-19.6~~	~~Pendleton~~
~~Welch Fork*~~	~~Mouth to First Road Crossing~~	~~0.0-1.0~~	~~Menifee~~
~~West Creek*~~	~~Mouth to Headwaters~~	~~0.0-9.5~~	~~Robertson~~
~~KENTUCKY RIVER BASIN~~			
~~Big Double Creek*~~	~~Mouth to Headwaters~~	~~0.0-6.5~~	~~Clay~~
~~Bill Branch*~~	~~Mouth to Right Fork and Left Fork Creek~~	~~0.0-2.2~~	~~Leslie~~
~~Buffalo Creek*~~	~~Mouth to Right Fork and Left Fork~~	~~0.0-1.6~~	~~Owsley~~
~~Cavanaugh Creek*~~	~~South Fork of Station Camp Creek to Foxtown Rd~~	~~0.0-5.3~~	~~Jackson~~
~~Cawood Branch*~~	~~Mouth to Headwaters~~	~~0.0-2.1~~	~~Leslie~~
~~Cedar Creek Unidentified Tributary*~~	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Owen~~
~~Chest[illegible]r Creek*~~	~~Mouth to Headwaters~~	~~0.0-2.8~~	~~Wolfe~~
~~Clea[illegible]eek*~~	~~Mouth to East Fork Clear Creek~~	~~0.0-8.8~~	~~Woodford~~
~~Clem[illegible] Fork*~~	~~Mouth to Headwaters~~	~~0.0-4.7~~	~~Breathitt~~

~~Coles Fork*~~	~~Mouth to Headwaters~~	~~0.0-5.5~~	~~Breathitt~~
~~Drennon Creek*~~	~~Flat Bottom Road Crossing to Town Branch~~	~~10.5-11.9~~	~~Henry~~
~~East Fork of Indian Creek*~~	~~West Fork of Indian Creek to Headwaters~~	~~0.0-8.5~~	~~Menifee~~
~~Elisha Creek*~~	~~Elisha Creek Rd Crossing to Right Fork and Middle Fork Elisha Creek~~	~~0.95-1.7~~	~~Leslie~~
~~Emily Run~~	~~Mouth to Unidentified Tributary~~	~~0.0-3.9~~	~~Henry~~
~~Evans Fork*~~	~~Mouth to Headwaters~~	~~0.0-2.9~~	~~Estill~~
~~Falling Rock Branch*~~	~~Mouth to Headwaters~~	~~0.0-0.6~~	~~Breathitt~~
~~Gladie Creek*~~	~~Mouth to Headwaters~~	~~0.0-8.4~~	~~Menifee~~
~~Glenns Creek Unidentified Tributary~~	~~Landuse Change to Headwaters~~	~~0.2-1.3~~	~~Woodford~~
~~Goose Creek~~	~~Mouth to Laurel Creek~~	~~0.0-9.3~~	~~Clay~~
~~Griers Creek*~~	~~Urban Area to Unidentified Tributary~~	~~2.9-3.4~~	~~Woodford~~
~~Grindstone Creek*~~	~~Mouth to Headwaters~~	~~0.0-2.2~~	~~Franklin~~
~~Hardwick Creek~~	~~Mouth to Little Hardwick Creek~~	~~0.0-3.2~~	~~Powell~~
~~Hell For Certain~~	~~Mouth to Big Fork~~	~~0.0-2.1~~	~~Leslie~~
~~Hines Creek*~~	~~Mouth to Hines Creek Road Crossing~~	~~0.0-2.4~~	~~Madison~~
~~Honey Branch~~	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Leslie~~
~~Hopper Cave* Branch~~	~~Mouth to Headwaters~~	~~0.0-1.6~~	~~Jackson~~
~~Indian Creek*~~	~~Backwater Kentucky River to Headwaters~~	~~0.55-4.7~~	~~Carroll~~
~~Indian Fork*~~	~~Mouth to Headwaters~~	~~0.0-3.3~~	~~Shelby~~
~~John Carpenter Fork*~~	~~Mouth to Headwaters~~	~~0.0-1.5~~	~~Breathitt~~
~~Left Fork Big Double Creek*~~	~~Mouth to Headwaters~~	~~0.0-1.5~~	~~Clay~~
~~Line Fork*~~	~~Defeated Creek to Headwaters~~	~~11.6-27.5~~	~~Letcher~~
~~Line Fork Unidentified Tributary* (LCW)~~	~~Mouth to Headwaters~~	~~0.0-0.55~~	~~Letcher~~
~~Little Millseat Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.2~~	~~Breathitt~~
~~Little Sixmile Creek*~~	~~Mouth to Headwaters~~	~~0.0-5.2~~	~~Henry~~
~~Lulbegrud Creek~~	~~Mouth to Falls Branch~~	~~0.0-7.3~~	~~Clark/Powell~~
~~Middle Fork of Kentucky River~~	~~Mouth to Upper Twin Creek~~	~~0.0-12.5~~	~~Lee~~
~~Middle Fork of Kentucky River~~	~~Hyden, Kentucky to Greasy Creek~~	~~76.1-84.0~~	~~Leslie~~
~~Middle Fork of Red River~~	~~South Fork Red River to Natural Bridge State Park Lake~~	~~1.8-8.3~~	~~Powell~~
~~Mill Creek*~~	~~Mouth to Headwaters~~	~~0.0-8.3~~	~~Owen~~
~~Millseat Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.9~~	~~Breathitt~~
~~Muddy Creek*~~	~~Elliston, Kentucky to Viney Creek~~	~~13.4-20.2~~	~~Madison~~
~~Musselman Creek*~~	~~Mouth to Headwaters~~	~~0.0-8.4~~	~~Grant~~
~~Red Bird River~~	~~Mouth to Big Creek~~	~~0.0-15.0~~	~~Clay~~
~~Right Fork of Buffalo Creek*~~	~~Mouth to Headwaters~~	~~0.0-11.2~~	~~Owsley~~
~~Roaring Fork*~~	~~Mouth to Headwaters~~	~~0.0-0.85~~	~~Breathitt~~
~~Sand Ripple Creek*~~	~~Mouth to Headwaters~~	~~0.0-3.9~~	~~Henry~~
~~Severn Creek*~~	~~Mouth to North Fork Severn Creek~~	~~0.0-2.8~~	~~Owen~~
~~Shelly Rock Fork*~~	~~Mouth to Headwaters~~	~~0.0-0.6~~	~~Breathitt~~
~~Sixmile Creek*~~	~~Little Sixmile to Dam~~	~~6.9-14.7~~	~~Henry~~
~~South Fork of Kentucky River~~	~~Mouth to Sexton Creek~~	~~0.0-27.7~~	~~Owsley~~
~~South Fork of Red River~~	~~Mouth to Sandlick Fork~~	~~0.0-3.9~~	~~Powell~~
~~South Fork of Station Camp Creek*~~	~~Mouth to Rock Lick Creek~~	~~0.0-9.6~~	~~Jackson~~
~~Spruce Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.1~~	~~Leslie~~
~~Station Camp Creek*~~	~~Landuse Change to South Fork Station Camp Creek~~	~~19.0-22.3~~	~~Estill~~
~~Steer Fork*~~	~~Mouth to Headwaters~~	~~0.0-2.9~~	~~Jackson~~
~~Sturgeon Creek*~~	~~Duck Fork to Little Sturgeon Creek~~	~~1.3-13.7~~	~~Lee~~
~~Sugar Creek*~~	~~Landuse Change to Headwaters~~	~~0.8-3.8~~	~~Leslie~~
~~War Fork*~~	~~Mouth to Headwaters~~	~~0.0-13.7~~	~~Jackson~~
~~Wolfpen Creek*~~	~~Mouth to Headwaters~~	~~0.0-3.2~~	~~Menifee~~
~~SALT RIVER BASIN~~			
~~Brashears Creek~~	~~Guist Creek to Bullskin and Clear Creek~~	~~13.0-25.5~~	~~Shelby~~
~~Cedar Creek*~~	~~Mouth to Greens Branch~~	~~0.0-5.1~~	~~Bullitt~~
~~Chaplin River*~~	~~Thompson Creek to Cornishville, KY~~	~~40.1-53.7~~	~~Washington~~

~~Guist Creek~~	~~Mouth to Jeptha Creek~~	~~0.0-15.4~~	~~Spencer~~
~~Harts Run*~~	~~Mouth to Headwaters~~	~~0.0-2.3~~	~~Bullitt~~
~~Otter Creek*~~	~~Landuse Change to East Fork and Middle Fork Otter Creek~~	~~1.7-2.7~~	~~Larue~~
~~Overalls Creek*~~	~~Mouth to Headwaters~~	~~0.0-1.3~~	~~Bullitt~~
~~Salt Lick Creek*~~	~~Mouth to Headwaters~~	~~0.0-8.4~~	~~Marion~~
~~Sulphur Creek*~~	~~Mouth to Chesse Lick and Brush Creek~~	~~0.0-9.7~~	~~Anderson~~
~~West Fork Otter Creek*~~	~~Mouth to Headwaters~~	~~0.0-4.7~~	~~Larue~~
~~Wilson Creek*~~	~~Mouth to Headwaters~~	~~0.0-17.0~~	~~Bullitt~~
~~GREEN RIVER BASIN~~			
~~Beaverdam Creek*~~	~~Mouth to Headwaters~~	~~0.0-14.1~~	~~Edmonson~~
~~Cane Run*~~	~~Nolin River Backwaters to Headwaters~~	~~1-6.5~~	~~Hart~~
~~Caney Fork*~~	~~Mouth to Headwaters~~	~~0.0-6.6~~	~~Barren~~
~~Clifty Creek*~~	~~Barton Run to Western Kentucky Parkway~~	~~7.3-17.2~~	~~Grayson~~
~~Clifty Creek*~~	~~Little Clifty Creek to Sulphur Lick~~	~~7.7-13.2~~	~~Todd~~
~~East Fork Little Barren River*~~	~~Red Lick Creek to Flat Creek~~	~~19-20.2~~	~~Metcalfe~~
~~Ellis Fork*~~	~~Mouth to Headwaters~~	~~0.0-3.2~~	~~Adair~~
~~Falling Timber Creek*~~	~~Landuse Change to Headwaters~~	~~7-15.5~~	~~Metcalfe~~
~~Fiddlers Creek*~~	~~Mouth to Headwaters~~	~~0.0-5.8~~	~~Breckinridge~~
~~Forbes Creek*~~	~~Mouth to Unidentified Tributary~~	~~0.0-3.9~~	~~Christian~~
~~Gasper River*~~	~~Clear Fork to Wiggington Creek~~	~~17.0-35.2~~	~~Logan~~
~~Goose Creek*~~	~~Mouth to Little Goose Creek~~	~~0.0-8.1~~	~~Casey~~
~~Green River~~	~~Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek~~	~~181.7-207.8~~	~~Edmonson~~
~~Green River Unidentified Tributary*~~	~~Landuse Change to Headwaters~~	~~0.8-3.2~~	~~Adair~~
~~Halls Creek*~~	~~Unidentified Tributary to Headwaters~~	~~9.6-12.1~~	~~Ohio~~
~~Lick Creek*~~	~~Mouth to Headwaters~~	~~0.0-9.9~~	~~Simpson~~
~~Linders Creek*~~	~~Mouth to Sutzer Creek~~	~~0.0-7.7~~	~~Hardin~~
~~Little Beaverdam Creek~~	~~Mouth to SR 743~~	~~0.0-11.3~~	~~Warren~~
~~Little Short Creek*~~	~~Mouth to Headwaters~~	~~0.0-3.0~~	~~Grayson~~
~~Lynn Camp Creek*~~	~~Mouth to Lindy Creek~~	~~0.0-8.3~~	~~Hart~~
~~McFarland Creek*~~	~~Grays Branch to Unidentified Tributary~~	~~1.4-4.8~~	~~Christian~~
~~Meeting Creek*~~	~~Little Meeting Creek to Petty Branch~~	~~5.2-13.8~~	~~Hardin~~
~~Muddy Creek*~~	~~Landuse Change to Headwaters~~	~~13.0-15.5~~	~~Ohio~~
~~North Fork Rough River*~~	~~Buffalo Creek to Reservoir Dam~~	~~23.44-28.1~~	~~Breckinridge~~
~~Peter Creek*~~	~~Caney Fork to Dry Fork~~	~~11.6-18.5~~	~~Barren~~
~~Pond Run*~~	~~Landuse Change to Headwaters~~	~~1.4-6.8~~	~~Brecki-nridge/Ohio~~
~~Rough River*~~	~~Linders Creek to Vertrees Creek~~	~~136.9-147.8~~	~~Hardin~~
~~Russell Creek*~~	~~Mouth to Columbia WWTP~~	~~0.0-40.0~~	~~Adair~~
~~Russell Creek*~~	~~Reynolds Creek to Headwaters~~	~~55.9-68.2~~	~~Adair~~
~~Sixes Creek*~~	~~Wild Branch to Headwaters~~	~~2.0-7.5~~	~~Ohio~~
~~Sulphur Branch*~~	~~Mouth to Headwaters~~	~~0.0-2.0~~	~~Edmonson~~
~~Trammel Fork*~~	~~Mouth to Tennessee Stateline~~	~~0.0-30.15~~	~~Allen~~
~~West Fork Pond River*~~	~~Unidentified Tributary to East Branch Pond River~~	~~12.7-22.5~~	~~Christian~~
~~White Oak Creek Unidentified Tributary*~~	~~Hovious Rd Crossing to SR 76~~	~~0.4-3.0~~	~~Adair~~
~~LOWER CUMBERLAND RIVER BASIN~~			
~~Crooked Creek*~~	~~Lake Barkley Backwaters to Headwaters~~	~~4.0-9.4~~	~~Trigg~~
~~Donaldson Creek*~~	~~Craig Branch to Unidentified Tributary~~	~~6.9-10.3~~	~~Trigg~~
~~Elk Creek*~~	~~Tennessee Stateline to Dry Branch~~	~~7.5-9.8~~	~~Logan~~
~~Sugar Creek*~~	~~Lick Creek to Unidentified Tributary~~	~~2.1-6.7~~	~~Livingston~~
~~West Fork of Red River*~~	~~Tennessee Stateline to Montgomery Creek~~	~~16.1-26.5~~	~~Christian~~
~~Whippoorwill Creek*~~	~~Mouth to Vicks Branch~~	~~0.0-13.0~~	~~Logan~~
~~TENNESSEE RIVER BASIN~~			
~~Blood River*~~	~~McCullough Fork to Tennessee Stateline~~	~~12.2-15.65~~	~~Calloway~~
~~Clarks River~~	~~Persimmon Slough to Middle Fork Creek~~	~~26.6-28.4~~	~~Marshall~~

~~Grindstone Creek*~~	~~Mouth to Headwaters~~	~~0.0-2.3~~	~~Calloway~~
~~Panther Creek*~~	~~Mouth to Headwaters~~	~~0.0-5.1~~	~~Calloway~~
~~Panther Creek*~~	~~Channelization to Impoundment~~	~~1.1-6.0~~	~~Graves~~
~~Panther Creek Unidentified Tributary*~~	~~Mouth to Headwaters~~	~~0.0-2.1~~	~~Graves~~
~~Soldier Creek*~~	~~Mouth to South Fork Solider~~	~~0.0-5.3~~	~~Marshall~~
~~Sugar Creek*~~	~~Kentucky Lake Backwaters to Buzzard Roost Road~~	~~2.1-3.3~~	~~Calloway~~
~~Sugar Creek*~~	~~Mouth to Unnamed Reservoir~~	~~0.0-4.0~~	~~Graves~~
~~Trace Creek*~~	~~Mouth to Neeley Branch~~	~~0.0-3.0~~	~~Graves~~
~~West Fork Clarks River*~~	~~Soldier Creek to Duncan Creek~~	~~19.7-22.7~~	~~Graves~~
~~Wildcat Creek*~~	~~Ralph Wright Road Crossing to Headwaters~~	~~3.5-6.7~~	~~Calloway~~
~~TRADEWATER RIVER BASIN~~			
~~East Fork Flynn Fork*~~	~~Landuse Change to Headwaters~~	~~2.5-4.6~~	~~Caldwell~~
~~Piney Creek*~~	~~Lake Beshear Backwaters to Headwaters~~	~~4.5-10.2~~	~~Caldwell~~
~~Piney Creek Unidentified Tributary*~~	~~Mouth to Headwaters~~	~~0.0-2.9~~	~~Caldwell~~
~~Sandlick Creek*~~	~~Camp Creek to Headwaters~~	~~4.9-9.0~~	~~Christian~~
~~Sandlick Creek Unidentified Tributary*~~	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Christian~~
~~Tradewater River*~~	~~Dripping Springs Branch to Buntin Lake Dam~~	~~123.2-131.1~~	~~Christian~~
~~OHIO RIVER BASIN (Main Stem and Minor Tributaries)~~			
~~Big Sugar Creek Unidentified Tributary*~~	~~I-71 to Headwaters~~	~~1.0-3.6~~	~~Gallatin~~
~~Corn Creek Unidentified Tributary*~~	~~Mouth to Headwaters~~	~~0.0-2.0~~	~~Trimble~~
~~Crooked Creek*~~	~~Rush Creek to City Lake Dam~~	~~17.5-25.6~~	~~Crittenden~~
~~Double Lick Creek*~~	~~Mouth to Landuse Change~~	~~0.0-1.4~~	~~Boone~~
~~Garrison Creek*~~	~~Mouth to Headwaters~~	~~0.0-4.1~~	~~Boone~~
~~Kinniconick Creek*~~	~~McDowell Creek to Headwaters~~	~~5.1-50.4~~	~~Lewis~~
~~Massac Creek Unidentified Tributary*~~	~~Mouth to Headwaters~~	~~0.0-1.7~~	~~McCracken~~
~~Middle Fork Massac Creek*~~	~~Hines Road to Headwaters~~	~~3.15-6.2~~	~~McCracken~~
~~West Fork Massac Creek*~~	~~SR 725 to Little Massac Creek~~	~~3.2-5.4~~	~~McCracken~~
~~Second Creek*~~	~~Private Road Crossing to Headwaters~~	~~0.5-2.9~~	~~Boone~~
~~Yellowbank Creek*~~	~~Ohio River Backwaters to Headwaters~~	~~1.4-11.4~~	~~Breckinridge~~
~~LAKES AND RESERVOIRS~~			
~~Metropolis~~	~~Entire Lake~~		~~McCracken~~
~~Swan~~	~~Entire Lake~~		~~Ballard~~
~~MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)~~			
~~Jackson Creek*~~	~~Mouth to Headwaters~~	~~0.0-2.6~~	~~Graves~~
~~Obion Creek*~~	~~Hurricane Creek to Little Creek~~	~~25.2-35.5~~	~~Hickman~~
~~Terrapin Creek*~~	~~Tennessee Stateline to Headwaters~~	~~2.8-7~~	~~Graves~~
~~Murphy's Pond~~	~~Entire Pond and Preserve Area~~		~~Hickman~~
~~UPPER CUMBERLAND RIVER BASIN~~			
~~Bad Branch*~~	~~Mouth to Headwaters~~	~~0.0-3.0~~	~~Letcher~~
~~Bark Camp Creek*~~	~~Mouth to Martins Fork~~	~~0.0-3.95~~	~~Whitley~~
~~Beaver Creek*~~	~~Mouth to Freeman Fork and Middle Fork~~	~~0.0-6.5~~	~~McCreary~~
~~Bee Lick Creek~~	~~Mouth to Unidentified Tributary~~	~~0.0-5.7~~	~~Pulaski~~
~~Brownies Creek*~~	~~Blacksnake Branch to Headwaters~~	~~9.0-16.0~~	~~Bell~~
~~Brush Creek~~	~~Wolf Creek to Reemergence of Sinking Creek~~	~~1.1-7.6~~	~~Rockcastle~~
~~Brushy Creek*~~	~~Mouth to Headwaters~~	~~0.0-16.0~~	~~Pulaski~~
~~Buck Creek*~~	~~Lake Cumberland Backwaters to Headwaters~~	~~5.0-62.6~~	~~Pulaski~~
~~Bunches Creek*~~	~~Mouth to Headwater~~	~~0.0-3.3~~	~~Whitley~~
~~Cane Creek*~~	~~Mouth to Headwaters~~	~~0.0-12.0~~	~~Laurel~~
~~Clifty Creek~~	~~Mouth to Rocky Branch~~	~~0.0-2.7~~	~~Pulaski~~
~~Cogur Fork*~~	~~Mouth to Headwaters~~	~~0.0-7.9~~	~~McCreary~~
~~Cumberland River~~	~~Wild River Boundaries~~	~~558.5-574.6~~	~~McCreary/ Whitley~~
~~Dog Slaughter Creek*~~	~~Mouth to North Fork and South Fork~~	~~0.0-1.1~~	~~Whitley~~
~~Eagle Creek*~~	~~Mouth to Headwaters~~	~~0.0-6.3~~	~~McCreary~~

~~Fugitt Creek*~~	~~Landuse Change to Headwaters~~	~~0.5-4.9~~	~~Harlan~~
~~Horse Lick Creek*~~	~~Mouth to Clover Bottom~~	~~0.0-12.3~~	~~Jackson~~
~~Howards Creek*~~	~~Dale Hollow lake Backwaters to Headwaters~~	~~0.8-3.4~~	~~Clinton~~
~~Indian Creek*~~	~~Laurel fork to Barren Fork~~	~~2.3-6.7~~	~~McCreary~~
~~Jackie Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.7~~	~~Whitley~~
~~Kilburn Fork~~	~~Mouth to Headwaters~~	~~0.0-6.3~~	~~McCreary~~
~~Laurel Creek~~	~~Mouth to Laurel Creek Dam~~	~~0.0-9.2~~	~~McCreary~~
~~Laurel Fork*~~	~~Tennessee Stateline to Tiny Branch/Pine Creek~~	~~4.2-13.0~~	~~Whitley~~
~~Laurel Fork*~~	~~Mouth to Headwaters~~	~~0.0-12.2~~	~~Jackson~~
~~Little South Fork of Cumberland River*~~	~~Mouth to Langham Branch~~	~~0.0-35.6~~	~~Wayne~~
~~Marsh Creek*~~	~~Laurel Creek to Headwaters~~	~~8.6-26.2~~	~~McCreary~~
~~Martins Fork of Cumberland River~~	~~Wild River Boundaries~~	~~27.4-31.3~~	~~Harlan~~
~~McFarland Creek~~	~~Little McFarland Creek to Spring Branch~~	~~0.8-6.2~~	~~Monroe~~
~~Meshack Creek~~	~~Mouth to Headwaters~~	~~0.0-2.8~~	~~Monroe~~
~~Middle Fork Rockcastle River*~~	~~Mouth to Horse Lick Creek~~	~~0.0-7.8~~	~~Jackson~~
~~Mud Camp Creek*~~	~~Mouth to Collins Branch~~	~~0.0-1.3~~	~~Cumberland~~
~~Mud Camp Creek*~~	~~Unidentified Tributary to Headwaters~~	~~3.7-8.4~~	~~Monroe/Cumberland~~
~~Otter Creek~~	~~Lake Cumberland Backwaters to Carpenter Fork~~	~~14.5-22.0~~	~~Wayne~~
~~Poor Fork Cumberland River*~~	~~Franks Creek to Headwaters~~	~~46.1-51.7~~	~~Letcher~~
~~Presley House Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.5~~	~~Letcher~~
~~Puncheoncamp Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.9~~	~~McCreary~~
~~Rock Creek*~~	~~White Oak Creek to Tennessee Stateline~~	~~4.1-21.9~~	~~McCreary~~
~~Rock Creek Unidentified Tributary*~~	~~Mouth to Headwaters~~	~~0.0-1.9~~	~~McCreary~~
~~Rock Creek Unidentified Tributary*~~	~~Mouth to Headwaters~~	~~0.0-1.15~~	~~McCreary~~
~~Rockcastle River~~	~~Wild River Boundaries~~	~~8.5-24.4~~	~~Laurel/Pulaski~~
~~Shillalah Creek*~~	~~Mouth to Headwaters~~	~~0.0-5.5~~	~~Bell~~
~~Sinking Creek*~~	~~Mouth to White Oak Creek~~	~~0.0-9.8~~	~~Laurel~~
~~Sulphur Creek*~~	~~Dale Hollow Backwaters to Headwaters~~	~~2.0-5.1~~	~~Clinton~~
~~South Fork of Dog Slaughter Creek*~~	~~Mouth to Headwaters~~	~~0.0-4.6~~	~~Whitley~~
~~South Fork Rockcastle River~~	~~Mouth to White Oak Creek~~	~~0.0-5.6~~	~~Laurel~~
~~Watts Branch*~~	~~Mouth to Headwaters~~	~~0.0-2.6~~	~~McCreary~~
~~Watts Creek*~~	~~Lake to Headwaters~~	~~2.2-4.3~~	~~Harlan~~]

*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if any of the following criteria are met:

1. Surface water is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;

2. Surface water is designated as an outstanding state resource water as set forth in 401 KAR 10:031[~~401 KAR 5:031~~], Section 8(1)(a)1, 2, and 3 and Section 8(1)(b);

3. Surface water contains either of the following:

a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in [~~"~~]Development and Application of the Kentucky Index of Biotic Integrity (KIBI)[~~"~~], 2003[~~, incorporated by reference in Section 3 of this administrative regulation~~]; or

b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003[~~, incorporated by reference in Section 3 of this administrative regulation~~]; or

4. Surface water in the cabinet's reference reach network.

(b) Implementation procedure.

1. Dischargers listed in clauses a through e of this subparagraph shall be[~~are~~] subject to control by existing cabinet programs including the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080. Subparagraphs 2 through 9 of this paragraph shall not apply to those dischargers identified in clauses a through e of this paragraph, except the cabinet shall assure water quality necessary to fully protect existing uses.

a. [~~"~~]KPDES general permits for[~~"~~] storm water discharge;

b. Coal mining discharge subject to regulation under the Surface Mining Control and Reclamation Act 30 U.S.C. 1201-1328 and 33 U.S.C. 1344;

c. Domestic sewage discharge from a single-family residence;

d. Concentrated animal feeding operations; and

e. KPDES permit renewals and modifications that result in less than a twenty (20) percent increase in pollutant loading from the previously permitted pollutant loading.

2. Zones of initial dilution shall be[~~are~~] prohibited in exceptional water unless assigned before December 12, 1999[~~the effective date of this administrative regulation~~].

3. Except as provided in subparagraph 7 of this paragraph, a KPDES permit for a new discharger or expanded discharge into exceptional water shall contain effluent limitations for the entire effluent and shall have an effluent quality of:

a. A chronic whole effluent toxicity limitation shall apply unless an acute whole effluent toxicity limitation is more stringent; and

b. Chloride limitations shall be based on the domestic water supply criterion of 250 mg/l.

4. Except as provided in subparagraph 7 of this paragraph, a KPDES permit for a new domestic sewage discharger or expanded domestic sewage discharge permitted after July 12, 1995 into exceptional water shall contain effluent limitations for the entire effluent and shall have an effluent quality of:

a. Not[~~No~~] greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand;

b. Not[~~No~~] greater than two (2) mg/l ammonia-nitrogen;

c. Not[~~No~~] greater than 0.010 mg/l total residual chlorine;

d. Not[~~No~~] greater than ten (10) mg/l total suspended solids;

e. Not[~~No~~] greater than one (1) mg/l total phosphorous;

f. A minimum of seven (7) mg/l dissolved oxygen;

g. The geometric mean[~~An arithmetic mean value~~] for fecal coliform bacteria shall not [~~to~~] exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days or 400 colonies per 100 milliliters during a period of seven (7) consecutive days, or the geometric[~~an arithmetic~~] mean for Escherichia coli bacteria shall not [~~to~~] exceed 130 colonies per 100 milliliters during a period of thirty (30) consecutive days or 230 colonies per 100 milliliters during a period of seven (7) consecutive days; and

h. The discharge shall not cause the average instream dissolved oxygen concentration to be less than six and zero-tenths (6.0) mg/l.

5. Except as provided in subparagraph (7) of this paragraph, a KPDES permit for a new nondomestic discharger or an expanded nondomestic discharge permitted after July 12, 1995 into exceptional water shall be restricted to not[~~no~~] more than one-half (1/2) of the water quality based limitations that would have been permitted at standard design conditions.

6. If the permit applicant accepts the effluent limitations required by subparagraphs 3, 4, and 5 of this paragraph, the KPDES permit shall be issued with these effluent limitations and additional requirements of the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080, without further antidegradation review.

7. If the permit applicant does not accept the effluent limitations required by subparagraphs 3, 4, and 5 of this paragraph, the applicant shall demonstrate [~~to the satisfaction of the cabinet~~] that [~~no~~] technologically or economically feasible alternatives do not exist and that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. For purposes of this administrative regulation, the approval of a POTWs regional facility plan pursuant to 401 KRS 5:006 shall demonstrate compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

b. The alternatives analysis and socioeconomic demonstration shall follow the guidelines in ["]Interim Economic Guidance for Water Quality Standards Workbook["], EPA, March 1995 [~~incorporated by reference in Section 3 of this administrative regulation~~].

c. The alternatives analysis shall consider the following:

(i)[~~a.~~] Discharge to other treatment facilities;

(ii)[~~b.~~] Use of other discharge locations;

(iii)[~~c.~~] Water reuse or recycle;

(iv)[~~d.~~] Process and treatment alternatives;

(v)[~~e.~~] On-site or subsurface disposal; and

(vi)[~~f.~~] Any other examination of alternatives to lowering water quality to which the cabinet and the applicant can agree.

8. A permit applicant who has failed to demonstrate [~~to the satisfaction of the cabinet~~] the necessity for lowering water quality shall meet the effluent limitations required by this paragraph and additional requirements of the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080.

9. A permit applicant who demonstrates [~~to the satisfaction of the cabinet~~] the necessity for lowering water quality shall meet the water quality based limitations as outlined in 401 KAR 10:031[~~401 KAR 5:031~~].

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as provided for in subsection 4(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026[~~401 KAR 5:026~~] and is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section.

(b) Implementation procedure. KPDES permit applications for discharges into high quality water received after U.S. EPA approval of this subsection shall comply with this paragraph.

1. Dischargers listed in clauses a through e of this subparagraph shall be[~~are~~] subject to control by existing cabinet programs including the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080. Subparagraphs 2 through 6 of this paragraph shall not apply to those dischargers identified in clauses a through e of this paragraph, except the cabinet shall assure water quality necessary to fully protect existing uses.

a. KPDES general permits for storm water discharge;

b. Coal mining discharge subject to regulation under the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201-1328[~~et seq.~~], and 33 U.S.C. 1344;

c. Domestic sewage discharge from a single-family residence;

d. Concentrated animal feeding operations; and

e. KPDES permit renewals and modifications that result in less than a twenty (20) percent increase in pollutant loading from the previously permitted pollutant loading.

2. Except as provided in subparagraph 5 of this paragraph, a KPDES permit for a new domestic sewage discharger or expanded domestic sewage discharge into high quality water shall contain effluent limitations for the entire effluent and shall have an effluent quality of:

a. Not[~~No~~] greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand;

b. Not[~~No~~] greater than two (2) mg/l ammonia-nitrogen;

c. Not[~~No~~] greater than 0.010 mg/l total residual chlorine;

d. Not[~~No~~] greater than ten(10) mg/l total suspended solids;

e. Not[~~No~~] greater than one (1) mg/l total phosphorous;

f. A minimum of seven (7) mg/l dissolved oxygen; and

g. The geometric mean[~~An arithmetic mean value~~] for fecal coliform bacteria shall not [~~to~~] exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days or 400 colonies per 100 milliliters during a period of seven (7) consecutive days, or the geometric[~~an arithmetic~~] mean for Escherichia coli bacteria shall not [~~to~~] exceed 130 colonies per 100 milliliters during a period of thirty (30) consecutive days or 230 colonies per 100 milliliters during a period of seven (7) consecutive days.

3. Except as provided in subparagraph 5 of this paragraph, a KPDES permit for a new nondomestic discharger or an expanded nondomestic discharge into high quality water shall be restricted to not[~~no~~] more than one-half (1/2) of the water quality based limitations that would have been permitted at standard design conditions.

4. If the permit applicant accepts the effluent limitations required by subparagraphs 2 and 3 of this paragraph, the KPDES permit shall be issued with these effluent limitations and any additional requirements of the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080, without further antidegradation review.

5. If the permit applicant does not accept the effluent limitations required by subparagraphs 2 and 3 of this paragraph, the applicant may request water quality based limitations permitted at standard design conditions.

a. In making this request, the applicant shall demonstrate [~~to the satisfaction of the cabinet~~] that [~~no~~] technologically or economically feasible alternatives do not exist and that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located.

b. [~~For purposes of this administrative regulation,~~] The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall demonstrate compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

c. The alternatives analysis and socioeconomic demonstration shall consider the following:

(i)[~~a.~~] Discharge to other treatment facilities;

(ii)[~~b.~~] Use of other discharge locations;

(iii)[~~c.~~] Water reuse or recycle;

(iv)[~~d.~~] Process and treatment alternatives;

(v)[~~e.~~] On-site or sub-surface disposal;

(vi)[~~f.~~] Any other examination of alternatives to lowering water quality to which the cabinet and the applicant can agree;

(vii)[~~g.~~] The positive or beneficial effect of the facility on an existing environmental or public health problem;

(viii)[~~h.~~] The increase or avoidance of a decrease in employ-

ment;

(ix)[~~i.~~] The increase in production level;

(x)[~~j.~~] The increase in operational efficiency;

(xi)[~~k.~~] Industrial or commercial benefit to the community; and

(xii)[~~l.~~] Any other economic or social benefit to the community.

6. A permit applicant who has failed to demonstrate [~~to the satisfaction of the cabinet~~] the necessity for lowering water quality shall meet the effluent limitations required by this paragraph and additional requirements of the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080.

7. A permit applicant who demonstrates [~~to the satisfaction of the cabinet~~] the necessity for lowering water quality shall meet the water quality based limitations as outlined in 401 KAR 10:031[~~401 KAR 5:031~~].

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315 [~~or designated pursuant to 401 KAR 10:026, Section 1, with a use of Modified Warm Water Aquatic Habitat~~].

1. Surface water categorized as impaired shall be assessed by the cabinet as not fully supporting any applicable designated uses.

2. A surface water shall not be categorized as impaired water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026[~~401 KAR 5:026~~].

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be[~~is~~] regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5:050-5:080.

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10:026[~~401 KAR 5:026~~].

(1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation.

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section.[~~;~~]

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A[~~Any~~] permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, **33 U.S.C. 1313**, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent [~~as approved by the cabinet~~] showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall[~~may~~] be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water[~~,~~] and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include the following:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent [~~as approved by the cabinet~~] showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. [~~mining, agricultural, recreational, low, medium, and high density residential, commercial, and industrial, and~~] Specific land uses adjacent to the surface water for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water[~~,~~] and the $7Q_{10}$ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3 of this administrative regulation are utilized.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(c) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; and

(d) "401 KAR 5:030 Antidegredation Implementation Procedures Process Flow Chart", May 25, 2004, KPDES Branch, Kentucky Division of Water, Kentucky Department for Environmental Protection.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, **200 Fair Oaks Lane** [~~14 Reilly Road~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 12, 2008 at noon

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-011, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control point source water pollution in waters affected by that policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by implementing the antidegradation policy for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment includes another 38 stream segments totaling 118 miles of surface waters newly categorized as exceptional water as a result of routine watershed monitoring and investigations of potential waters affected by permitted activities since the previous revisions to the regulations in 2004.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add waters that have been found to meet the criteria for Exceptional water since the previous revisions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This amendment establishes procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes a methodology to implement the antidegradation policy contained in 401 KAR10:029 by establishing procedures to control point source water pollution in waters affected by that policy.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by listing surface waters newly categorized as exceptional water and adding a qualifying criterion for waters in the Impaired Water category.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation includes 38 surface waters newly categorized as exceptional waters. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams categorized as exceptional water or high quality water could be affected by either stricter discharge limitations or an alternatives analysis and socioeconomic demonstration.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The permit limitations imposed on new or expanded point source dischargers into water bodies could result in additional treatment outlays, training costs, and operational changes. New or expanded point source dischargers covered under the Section 402 KPDES permit system may incur costs of alternatives and pollution prevention and socioeconomic analyses. This requirement already exists in state and federal law. This amended administrative regulation sets forth specific implementation procedures to comply with existing antidegradation requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Therefore, it is not possible to determine quantitative costs to implement this regulation. The 38 new Exceptional waters are almost exclusively in more undeveloped areas and the effect of including them in regulation under this antidegradation category should be minimal for local economies. The provisions in the antidegradation regulation apply only to new and expanded discharges.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters. Some communities and organizations have embraced streams in this category because it benefits the quality-of-life of the community. This positive quality of life value is difficult to estimate and has not been projected in this analysis.

(5)Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Given current budgetary limitations, additional workload will be absorbed within existing levels of funding and staffing. There are no initial costs to implement this regulation.

(b) On a continuing basis: The cabinet, in implementing the requirements of this amended administrative regulation, will internalize most associated costs with normal budget appropriations. Socioeconomic demonstrations will be reviewed and determinations made as to their adequacy. Costs may increase if the division's findings are contested.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly. The existing budget for the Division of Water utilizes approximately $800,000 in general funds and approximately $240,000 in federal funds to implement this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees or funding increases are not anticipated to be necessary to the implementation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor directly or

indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is used in this administrative regulation. The cabinet concluded that exceptional and high quality water receiving stormwater discharges covered by the KPDES general permits are protected under existing cabinet programs and do not require additional antidegradation review. Storm water discharges are considered to be short-term impacts and the vast majority do not receive numerical permit limits; however, they must comply with the best management practices and are inspected by the cabinet to ensure compliance. Coal mining discharge is not subject to additional antidegradation review in exceptional and high quality water. The cabinet's Section 402 KPDES permit process addresses the quality of discharges from permitted sediment ponds, not the methods of coal mining that are used or the location of the pond itself. Discharge limits are technology-based and are set by U.S. EPA and the cabinet for the coal mining industry. Fills in waters of the U.S. that are designated as outstanding state resource waters and cold water aquatic habitats will receive additional review by the cabinet under the Section 401 Water Quality Certification process. This review complements the Corps' 404 evaluation and is intended to insure that these waters and their aquatic resources are protected. Unavoidable impacts require compensatory mitigation to replace the lost aquatic stream functions using the Corps' Eastern Kentucky Stream Functional Assessment Protocol. No fills are permitted in streams designated as outstanding state resource water (OSRW). Coal mining is also subject to regulation under the Surface Mining Control and Reclamation Act. Domestic sewage discharge from a single-family residence is also not subject to additional antidegradation review in exceptional and high quality water if the cabinet deems that no feasible alternatives exist. The cabinet considers alternatives analysis for domestic sewage dischargers. Concentrated Animal Feeding Operations must already comply with a no discharge to waters of the Commonwealth permit; therefore, the cabinet concluded that Concentrated Animal Feeding Operations located next to excellent and high quality water are protected under existing cabinet programs and need not be subjected to additional antidegradation analysis. Operations that expand by less than twenty percent over currently permitted pollutant loadings are not subject to further antidegradation analysis. This is consistent with the existing requirements of this administrative regulation. The cabinet shall assure water quality necessary to fully protect existing uses. The cabinet concluded that the approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 (201 Planning Document) will demonstrate compliance with the alternatives analysis and socioeconomic demonstration.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amended administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into outstanding national resource waters, exceptional waters, or high quality waters.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amended administrative regulation relates to local governments' wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other Explanation: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters and high quality waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads. The permit limitations imposed on new or expanded point source dischargers into water bodies could result in additional treatment outlays, training costs, and operational changes. New or expanded dischargers may incur costs of alternatives and pollution prevention analyses. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters. This requirement already exists in state and federal law. The amended administrative regulation does not create additional obligations for dischargers. This amended administrative regulation sets forth specific implementation procedures to comply with already existing antidegradation requirements. This administrative regulation allows regional publicly-owned treatment works to use their Regional Facility Plan (201 Planning Document) as an exception to compliance with the socioeconomic demonstration and alternatives analysis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for implementing an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states' water quality programs are left to the states.

2. State compliance standards. 401 KAR 10:001, 10:026, 10:029, 10:030, and 10:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 10:031. Surface water standards.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-

400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, **EO 2008-507, 2008-531**

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287[~~et seq.~~], 1531-1544[~~et seq.~~], 33 U.S.C. 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [~~Environmental and Public Protection~~] cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. **EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.** This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030[~~5:002, 5:026, 5:029, and 5:030~~] establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that[~~which~~] consist of designated legitimate uses of the surface waters of the commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. [~~Part~~] 131, and KRS Chapter 224 [~~federal and state laws~~].

Section 1. Nutrient Limits. In lakes and reservoirs and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall be limited in accordance with:

(1) The scope of the problem;

(2) The geography of the affected area; and

(3) Relative contributions from existing and proposed sources.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria shall be[~~are~~] applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:029[~~5:029~~], Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) Settle to form objectionable deposits;

(b) Float as debris, scum, oil, or other matter to form a nuisance;

(c) Produce objectionable color, odor, taste, or turbidity;

(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, **or** fish and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species;

(f)**1.** Cause fish flesh tainting.

2. The concentration of phenol shall not exceed 300 µg/l as an instream value. [~~The concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) µg/l as an instream value;~~

~~(g) Cause the following changes in radionuclides:~~

~~1. The gross total alpha particle activity, including radium-226 but excluding radon and uranium, to exceed fifteen (15) pCi/l;~~

~~2. Combined radium-226 and radium-228 to exceed five (5) pCi/l. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l;~~

~~3. The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;~~

~~4. The concentration of tritium to exceed 20,000 pCi/l;~~

~~5. The concentration of total Strontium-90 to exceed eight (8) pCi/l;~~

~~6. The concentration of uranium to exceed thirty (30) µg/l.~~]

(2) The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation are applicable to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health from the consumption of fish tissue, and shall not be exceeded.

(b) For those substances associated with a cancer risk, an acceptable risk level of not[~~no~~] more than one (1) additional cancer case in a population of 1,000,000 people, or 1×10^{-6} shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses and associated criteria protective of those uses. Those uses are listed in 401 KAR 10:026[~~5:026~~]. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated use; and

(b) Protect human health from fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements.

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

(a) Aquatic life protection shall be $7Q_{10}$;

(b) Water-based recreation protection shall be $7Q_{10}$;

(c) Domestic water supply protection shall be determined at points of withdrawal as:

1. The harmonic mean for cancer-linked substances; and

2. $7Q_{10}$ for noncancer-linked substances;

(d) Human health protection from fish consumption and for changes in radionuclides shall be the harmonic mean; and

(e) Protection of aesthetics shall be $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ shall not be reduced by more than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/l $CaCO_3$, there shall not be a reduction below the natural level.

2. Alkalinity shall not be reduced or increased to a degree that[~~which~~] may adversely affect the aquatic community;[~~.~~]

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours;[~~.~~]

(c) Flow shall not be altered to a degree that[~~which~~] will adversely affect the aquatic community;[~~.~~]

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that[~~which~~] shall be based on the effects of temperature on the aquatic biota **that** [~~which~~] utilize specific surface waters of the commonwealth and that[~~which~~] may be affected by person-induced temperature changes.

a. Effects on downstream uses shall[~~will~~] also be considered in determining site-specific temperatures.

b. Values in the following table are guidelines for surface water temperature.Month/Date	Period Average		Instantaneous Maximum	
	(°F)	(°C)	(°F)	(°C)
January 1-31	45	7	50	10
February 1-29	45	7	50	10
March 1-15	51	11	56	13
March 16-31	54	12	59	15
April 1-15	58	14	64	18
April 16-30	64	18	69	21
May 1-15	68	20	73	23
May 16-31	75	24	80	27
June 1-15	80	27	85	29
June 16-30	83	28	87	31
July 1-31	84	29	89	32
August 1-31	84	29	89	32
September 1-15	84	29	87	31
September 16-30	82	28	86	30
October 1-15	77	25	82	28
October 16-31	72	22	77	25
November 1-30	67	19	72	22
December 1-31	52	11	57	14

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act**, 33 U.S.C. 1326,** shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made;[.]

(e) Dissolved oxygen.

1.a. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/l as a twenty-four (24) hour average in water with WAH use[daily average];

b. The instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/l in water with WAH use and five and zero-tenths (5.0) mg/l in water with OSRW use.

2. The dissolved oxygen concentration shall be measured at middepth in waters having a total depth of ten (10) feet or less and at representative depths in other waters;[.]

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;[.]

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;[.]

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities **shall be** [is] prohibited;[.]

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

$Y = 1.2\ (\text{Total ammonia-N})/(1 + 10^{pKa-pH})$

$pk_a = 0.0902 + (2730/(273.2 + T_c))$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/l);[.]

(j) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or nonpersistent with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or LC_{25}.

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the IC_{25}.

3. In the absence of acute criteria for pollutants listed in Table 1 of Section 6 of this administrative regulation, [or] for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that[which] are acutely toxic, the allowable instream concentration shall not exceed the LC_1 or one-third (1/3) LC_{50} concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0.3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defensible[approval by the cabinet].

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and[.]

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) µg/l or a chronic criteria value of eleven (11) µg/l.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/l as a twenty-four (24) hour[daily] average and five and zero-tenths (5.0) mg/l as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality; and[.]

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

[~~(3) Modified warm water aquatic habitat. The criteria adopted for the protection of warm water aquatic habitat also shall apply to the protection of modified warm water aquatic habitat, except that for dissolved oxygen a minimum concentration of four and zero-tenths (4.0) mg/l as a twenty-four (24) hour average and three and zero-tenths (3.0) mg/l as an instantaneous minimum shall be maintained.~~]

Section 5. Domestic Water Supply Use. Maximum allowable instream concentrations for specific substances, to be applicable at the point of withdrawal**, as established in 401 KAR 10:026, Section 5(2)(b), Table B,** for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed in Table 1 of this section.

Table 1

Pollutant	CAS[1] Number	Water Quality Criteria µg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Acenaphthene	83329	670	990		
Acrolein	107028	190	290		

Table 1

Pollutant	CAS[1] Number	Water Quality Criteria µg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Acrylonitrile	107131	0.051	0.25		
Aldrin	309002	0.000049	0.000050	3.0	
alpha-BHC	319846	0.0026	0.0049		
alpha-Endosulfan	959988	62	89	0.22	0.056
Anthracene	120127	8,300	40,000		
Antimony	7440360	5.6	640		
Arsenic	7440382	10.0		340	150
Asbestos	1332214	7 million fibers/L			
Barium	7440393	1,000			
Benzene	71432	2.2	51		
Benzidine	92875	0.000086	0.00020		
Benzo(a)anthracene	56553	0.0038	0.018		
Benzo(a)pyrene	50328	0.0038	0.018		
Benzo(b)fluoranthene	205992	0.0038	0.018		
Benzo(k)fluoranthene	207089	0.0038	0.018		
Beryllium	7440417	4			
Beta-BHC	319857	0.0091	0.017		
Beta-Endosulfan	33213659	62	89	0.22	0.056
bis(chloromethyl)ether	542881	0.00010	0.00029		
bis(2-chloroethyl)ether	111444	0.030	0.53		
bis(2-chloroisopropyl)ether	108601	1,400	65,000		
bis(2-ethylhexyl)phthalate	117817	1.2	2.2		
Bromoform	75252	4.3	140		
Butylbenzyl phthalate	85687	1,500	1,900		
Cadmium	7440439	5		e(1.0166 (ln Hard*)-3.924)	e(0.7409 (ln Hard*)-4.719)
Carbon tetrachloride	56235	0.23	1.6		
Chlordane	57749	0.00080	0.00081	2.4	0.0043
Chloride	16887006	250,000		**1,200,000** [~~860,000~~]	**600,000** [~~230,000~~]
Chlorobenzene	108907	130	1600		
Chlorodibromomethane	124481	0.40	13		
Chloroform	67663	5.7	470		
Chloropyrifos	2921882			0.083	0.041
Chromium	N/A	100			
Chromium (III)	16065831			e(0.8190 (ln Hard*)+ 3.7256)	e(0.8190 (ln Hard*)+ 0.6848)
Chromium (VI)	18540299			16	11
Chrysene	218019	0.0038	0.018		
Color	N/A	75 Platinum Co-balt Units			
Copper	7440508	1,300		e(0.9422 (ln Hard*)- 1.700)	e(0.8545 (ln Hard*)- 1.702)
Cyanide, Free	57125	140	140	22	5.2
Demeton	8065483				0.1
Diazinon	333415			0.17	0.17
Dibenzo(a,h)anthracene	53703	0.0038	0.018		
Dichlorobromomethane	75274	0.55	17		
Dieldrin	60571	0.000052	0.000054	0.24	0.056
Diethyl phthalate	84662	17,000	44,000		
Dimethyl phthalate	131113	270,000	1,100,000		
Di-n-butyl phthalate	84742	2,000	4,500		
Dinitrophenols	25550587	69	5300		
Endosulfan sulfate	1031078	62	89		
Endrin	72208	0.059	0.060	0.086	0.036
Endrin aldehyde	7421934	0.29	0.30		
Ethylbenzene	100414	530	2100		
Fluoranthene	206440	130	140		
Fluorene	86737	1,100	5,300		
Fluoride	N/A	4,000			
gamma-BHC (Lindane)	58899	0.98	1.8	0.95	
Guthion	86500				0.01
Heptachlor	76448	0.000079	0.000079	0.52	0.0038

Table 1

Pollutant	CAS[1] Number	Water Quality Criteria µg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Heptachlor epoxide	1024573	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene	118741	0.00028	0.00029		
Hexachlorobutadiene	87683	0.44	18		
Hexachlorocyclo-hexane-Technical	319868	0.0123	0.0414		
Hexachlorocyclopentadiene	77474	40	1100		
Hexachloroethane	67721	1.4	3.3		
Ideno(1,2,3-cd)pyrene	193395	0.0038	0.018		
Iron[8]	7439896	300		4,000	1,000
Isophorone	78591	35.0	960		
Lead	7439921	15		e(1.273 (ln Hard*)-1.460)	e(1.273 (ln Hard*)-4.705)
Lindane (gamma-BHC)	58899	0.98	1.8	0.95	
Malathion	121755				0.1
Mercury	7439976	2.0	0.051	1.4	0.77
Methylmercury	22967926		0.3 mg/Kg		
Methoxychlor	72435	100			0.03
Methylbromide	74839	47	1,500		
Methylene Chloride	75092	4.6	590		
Mirex	2385855				0.001
Nickel	7440020	610	4,600	e(0.8460 (ln Hard*)+2.255)	e(0.8460 (ln Hard*)+0.0584)
Nitrate (as N)	14797558	10,000			
Nitrobenzene	98953	17	690		
Nitrosamines, Other	N/A	0.0008	1.24		
N-Nitrosodibutylamine	924163	0.0063	0.22		
N-Nitrosodiethylamine	55185	0.0008	1.24		
N-Nitrosodimethylamine	62759	0.00069	3.0		
N-Nitrosodi-n-Propylamine	621647	0.0050	0.51		
N-Nitrosodiphenylamine	86306	3.3	6.0		
N-Nitrosopyrrolidine	930552	0.016	34		
Nonylphenol	**1044051**			28	6.6
Parathion	56382			0.065	0.013
Pentachlorobenzene	608935	1.4	1.5		
Pentachlorophenol	87865	0.27	3.0	e(1.005 (pH)-4.869)	e(1.005 (pH)-5.134)
Phenol	108952	21,000	1,700,000		
Polychlorinated Biphenyls (PCBs)	N/A	0.000064	0.000064		0.014
Pyrene	129000	830	4,000		
Selenium	7782492	170	4,200	20	5.0
Silver	7440224			e(1.72 (ln Hard*)-6.59)	
Sulfate	N/A	250,000			
Hydrogen Sulfide, Undissociated	7783064				2.0
Tetrachloroethylene	127184	0.69	3.3		
Thallium	7440280	0.24	0.47		
Toluene	108883	1300	15,000		
Total Dissolved Solids	N/A	250,000			
Toxaphene	8001352	0.00028	0.00028	0.73	0.0002
Tributyltin (TBT)				0.46	0.072
Trichloroethylene	79016	2.5	30		
Vinyl Chloride	75014	0.025	2.4		
Zinc	7440666	7,400	26,000	e(0.8473 (ln Hard*)+0.884)	e(0.8473 (ln Hard*)+0.884)
1,1-dichloroethylene	75354	330	7100		
1,1,1-trichloroethane	71556	200			
1,1,2-trichloroethane	79005	0.59	16		
1,1,2,2-tetrachloroethane	79345	0.17	4.0		
1,2-dichlorobenzene	95501	420	1300		
1,2-dichloroethane	107062	0.38	37		
1,2-dichloropropane	78875	0.50	15		
1,2-diphenylhydrazine	122667	0.036	0.20		
1,2-trans-dichloroethylene	156605	140	10,000		

Table 1

Pollutant	CAS[1] Number	Water Quality Criteria µg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
1,2,4-trichlorobenzene	120821	35	70		
1,2,4,5-tetrachlorobenzene	95943	0.97	1.1		
1,3-dichlorobenzene	541731	320	960		
1,3-dichloropropene	542756	0.34	21		
1,4-dichlorobenzene	106467	63	190		
2-chloronaphthalene	91587	1,000	1,600		
2-chlorophenol	95578	81	150		
2-methyl-4,6-dinitrophenol	534521	13	280		
2,3,7,8-TCDD (Dioxin)	1746016	5.0 E - 9	5.1 E - 9		
2,4-D	94757	100			
2,4-dichlorophenol	120832	77	290		
2,4-dimethylphenol	105679	380	850		
2,4-dinitrophenol	51285	69	5,300		
2,4-dinitrotoluene	121142	0.11	3.4		
2,4,5-TP (Silvex)	93721	10			
2,4,5-trichlorophenol	95954	1,800	3,600		
2,4,6-trichlorophenol	88062	1.4	2.4		
3,3'-dichlorobenzidine	91941	0.021	0.028		
4,4'-DDD	72548	0.00031	0.00031		
4,4'-DDE	72559	0.00022	0.00022		
4,4'-DDT	50293	0.00022	0.00022	1.1	0.001

[1]CAS = Chemical Abstracts Service.

[2]Water quality criteria in µg/L unless reported in different units.

[3]Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

[4]DWS = Domestic Water Supply Source.

[5]Fish = Fish Consumption.

[6]Acute criteria = protective of aquatic life based on one (1) hour exposure that does not exceed the criterion for a given pollutant.

[7]Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.

[8]The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/l (thirty-five hundred [3500] µg/l) if aquatic life has not been shown to be adversely affected.

*Hard = Hardness as mg/l $CaCO_3$.

(2) The following additional criteria for radionuclides shall apply for **Domestic [~~Drinking~~]** Water Supply use:

(a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, **shall not [~~to~~]** exceed fifteen (15) pCi/l;

(b) Combined radium-226 and radium-228 **shall not [~~to~~]** exceed five (5) pCi/l. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l;

(c) The concentration of total gross beta particle activity **shall not [~~to~~]** exceed fifty (50) pCi/l;

(d) The concentration of tritium **shall not [~~to~~]** exceed 20,000 pCi/l;

(e) The concentration of total Strontium-90 **shall not [~~to~~]** exceed eight (8) pCi/l; or

(f) The concentration of uranium **shall not [~~to~~]** exceed thirty (30) µg/l.

~~[Table 1~~

~~Pollutant~~	~~CAS[1] Number~~	~~Water Quality Criteria µg/L[2]~~			
		~~Human Health:~~		~~Warm Water Aquatic Habitat[3]:~~	
		~~DWS[4]~~	~~Fish[5]~~	~~Acute~~	~~Chronic~~
~~Acenaphthene~~	~~83329~~	~~670~~	~~990~~		
~~Acrolein~~	~~107028~~	~~190~~	~~290~~		
~~Acrylonitrile~~	~~107131~~	~~0.051~~	~~0.25~~		
~~Aldrin~~	~~309002~~	~~0.000049~~	~~0.000050~~	~~3.0~~	
~~alpha-BHC~~	~~319846~~	~~0.0026~~	~~0.0049~~		
~~alpha-Endosulfan~~	~~959988~~	~~62~~	~~89~~	~~0.22~~	~~0.056~~
~~Anthracene~~	~~120127~~	~~8,300~~	~~40,000~~		
~~Antimony~~	~~7440360~~	~~5.6~~	~~640~~		
~~Arsenic~~	~~7440382~~	~~10.0~~		~~340~~	~~150~~
~~Asbestos~~	~~1332214~~	~~7 million fibers/L~~			
~~Barium~~	~~7440393~~	~~1,000~~			
~~Benzene~~	~~71432~~	~~2.2~~	~~51~~		
~~Benzidine~~	~~92875~~	~~0.000086~~	~~0.00020~~		
~~Benzo(a)anthracene~~	~~56553~~	~~0.0038~~	~~0.018~~		
~~Benzo(a)pyrene~~	~~50328~~	~~0.0038~~	~~0.018~~		
~~Benzo(b)fluoranthene~~	~~205992~~	~~0.0038~~	~~0.018~~		
~~Benzo(k)fluoranthene~~	~~207089~~	~~0.0038~~	~~0.018~~		
~~Beryllium~~	~~7440417~~	~~4~~			
~~Beta-BHC~~	~~319857~~	~~0.0091~~	~~0.017~~		
~~Beta-Endosulfan~~	~~33213659~~	~~62~~	~~89~~	~~0.22~~	~~0.056~~
~~bis(chloromethyl)ether~~	~~542881~~	~~0.00010~~	~~0.00029~~		

~~bis(2-chloroethyl)ether~~	~~111444~~	~~0.030~~	~~0.53~~		
~~bis(2-chloroisopropyl)ether~~	~~108601~~	~~1,400~~	~~65,000~~		
~~bis(2-ethylhexyl)phthalate~~	~~117817~~	~~1.2~~	~~2.2~~		
~~Bromoform~~	~~75252~~	~~4.3~~	~~140~~		
~~Butylbenzyl phthalate~~	~~85687~~	~~1,500~~	~~1,900~~		
~~Cadmium~~	~~7440439~~	~~5~~		~~e(1.0166 (ln Hard*)-3.924)~~	~~e(0.7409 (ln Hard*)-4.719)~~
~~Carbon tetrachloride~~	~~56235~~	~~0.23~~	~~1.6~~		
~~Chlordane~~	~~57749~~	~~0.00080~~	~~0.00081~~	~~2.4~~	~~0.0043~~
~~Chloride~~	~~16887006~~	~~250,000~~		~~1,200,000~~	~~600,000~~
~~Chlorobenzene~~	~~108907~~	~~680~~	~~21,000~~		
~~Chlorodibromomethane~~	~~124481~~	~~0.40~~	~~13~~		
~~Chloroform~~	~~67663~~	~~5.7~~	~~470~~		
~~Chloropyrifos~~	~~2921882~~			~~0.083~~	~~0.041~~
~~Chromium~~	~~N/A~~	~~100~~			
~~Chromium (III)~~	~~16065831~~			~~e(0.8190 (ln Hard*)+3.7256)~~	~~e(0.8190 (ln Hard*)+0.6848)~~
~~Chromium (VI)~~	~~18540299~~			~~16~~	~~11~~
~~Chrysene~~	~~218019~~	~~0.0038~~	~~0.018~~		
~~Color~~	~~N/A~~	~~75 Platinum Cobalt Units~~			
~~Copper~~	~~7440508~~	~~1,300~~		~~e(0.9422 (ln Hard*)-1.700)~~	~~e(0.8545 (ln Hard*)-1.702)~~
~~Cyanide, Free~~	~~57125~~	~~700~~	~~220,000~~	~~22~~	~~5.2~~
~~Demeton~~	~~8065483~~				~~0.1~~
~~Dibenzo(a,h)anthracene~~	~~53703~~	~~0.0038~~	~~0.018~~		
~~Dichlorobromomethane~~	~~75274~~	~~0.55~~	~~17~~		
~~Dieldrin~~	~~60571~~	~~0.000052~~	~~0.000054~~	~~0.24~~	~~0.056~~
~~Diethyl phthalate~~	~~84662~~	~~17,000~~	~~44,000~~		
~~Dimethyl phthalate~~	~~131113~~	~~270,000~~	~~1,100,000~~		
~~Di-n-butyl phthalate~~	~~84742~~	~~2,000~~	~~4,500~~		
~~Dinitrophenols~~	~~25550587~~	~~69~~	~~5300~~		
~~Endosulfan sulfate~~	~~1031078~~	~~62~~	~~89~~		
~~Endrin~~	~~72208~~	~~0.76~~	~~0.81~~	~~0.086~~	~~0.036~~
~~Endrin aldehyde~~	~~7421934~~	~~0.29~~	~~0.30~~		
~~Ethylbenzene~~	~~100414~~	~~3,100~~	~~29,000~~		
Fluoranthene	206440	130	140		
~~Fluorene~~	~~86737~~	~~1,100~~	~~5,300~~		
~~Fluoride~~	~~N/A~~	~~2,000~~			
~~Foaming Agents~~	~~N/A~~	~~500~~			
~~gamma-BHC (Lindane)~~	~~58899~~	~~0.019~~	~~0.063~~	~~0.95~~	
~~Guthion~~	~~86500~~				~~0.01~~
~~Heptachlor~~	~~76448~~	~~0.000079~~	~~0.000079~~	~~0.52~~	~~0.0038~~
~~Heptachlor epoxide~~	~~1024573~~	~~0.000039~~	~~0.000039~~	~~0.52~~	~~0.0038~~
~~Hexachlorobenzene~~	~~118741~~	~~0.00028~~	~~0.00029~~		
~~Hexachlorobutadiene~~	~~87683~~	~~0.44~~	~~18~~		
~~Hexachlorocyclo-hexane-Technical~~	~~319868~~	~~0.0123~~	~~0.0414~~		
~~Hexachlorocyclopentadiene~~	~~77474~~	~~240~~	~~17,000~~		
~~Hexachloroethane~~	~~67721~~	~~1.4~~	~~3.3~~		
~~Ideno(1,2,3-cd)pyrene~~	~~193395~~	~~0.0038~~	~~0.018~~		
~~Iron~~[6]	~~7439896~~			~~4,000~~	~~1,000~~
~~Isophorone~~	~~78591~~	~~35.0~~	~~960~~		
~~Lead~~	~~7439921~~	~~15~~		~~e(1.273 (ln Hard*)-1.460)~~	~~e(1.273 (ln Hard*)-4.705)~~
~~Malathion~~	~~121755~~				~~0.1~~
~~Mercury~~	~~7439976~~	~~2.0~~	~~0.051~~	~~1.7~~	~~0.91~~
~~Methoxychlor~~	~~72435~~	~~40.0~~			~~0.03~~
~~Methylbromide~~	~~74839~~	~~47~~	~~1,500~~		
~~Methylene Chloride~~	~~75092~~	~~4.6~~	~~590~~		
~~Mirex~~	~~2385855~~				~~0.001~~
~~Nickel~~	~~7440020~~	~~610~~	~~4,600~~	~~e(0.8460 (ln Hard*)+2.255)~~	~~e(0.8460 (ln Hard*)+0.0584)~~
~~Nitrate (as N)~~	~~14797558~~	~~10,000~~			
~~Nitrobenzene~~	~~98953~~	~~17~~	~~690~~		
~~Nitrosamines, Other~~	~~N/A~~	~~0.0008~~	~~1.24~~		
~~N-Nitrosodibutylamine~~	~~924163~~	~~0.0063~~	~~0.22~~		

~~N-Nitrosodiethylamine~~	~~55185~~	~~0.0008~~	~~1.24~~		
~~N-Nitrosodimethylamine~~	~~62759~~	~~0.00069~~	~~3.0~~		
~~N-Nitrosodi-n-Propylamine~~	~~621647~~	~~0.0050~~	~~0.51~~		
~~N-Nitrosodiphenylamine~~	~~86306~~	~~3.3~~	~~6.0~~		
~~N-Nitrosopyrrolidine~~	~~930552~~	~~0.016~~	~~34~~		
~~Parathion~~	~~56382~~			~~0.065~~	~~0.013~~
~~Pentachlorobenzene~~	~~608935~~	~~1.4~~	~~1.5~~		
~~Pentachlorophenol~~	~~87865~~	~~0.27~~	~~3.0~~	~~e(1.005 (pH)-4.869)~~	~~e(1.005 (pH)-5.134)~~
~~Phthalate esters~~	~~N/A~~				~~3~~
~~Phenol~~	~~108952~~	~~21,000~~	~~1,700,000~~		
~~Polychlorinated Biphenyls (PCBs)~~	~~N/A~~	~~0.000064~~	~~0.000064~~		~~0.0014~~
~~Pyrene~~	~~129000~~	~~830~~	~~4,000~~		
~~Selenium~~	~~7782492~~	~~170~~	~~4,200~~	~~20~~	~~5.0~~
~~Silver~~	~~7440224~~			~~e(1.72 (ln Hard*)-6 .59)~~	
~~Sulfate~~	~~N/A~~	~~250,000~~			
~~Hydrogen Sulfide, Undissociated~~	~~7783064~~				~~2.0~~
~~Tetrachloroethylene~~	~~127184~~	~~0.69~~	~~3.3~~		
~~Thallium~~	~~7440280~~	~~1.7~~	~~6.3~~		
~~Toluene~~	~~108883~~	~~6,800~~	~~200,000~~		
~~Total Dissolved Solids~~	~~N/A~~	~~750,000~~			
~~Toxaphene~~	~~8001352~~	~~0.00028~~	~~0.00028~~	~~0.73~~	~~0.0002~~
~~Trichloroethylene~~	~~79016~~	~~2.5~~	~~30~~		
~~Vinyl Chloride~~	~~75014~~	~~2.0~~	~~530~~		
~~Zinc~~	~~7440666~~	~~7,400~~	~~26,000~~	~~e(0.8473 (ln Hard*)+ 0.884)~~	~~e(0.8473 (ln Hard*)+ 0.884)~~
~~1,1-dichloroethylene~~	~~75354~~	~~0.057~~	~~3.2~~		
~~1,1,1-trichloroethane~~	~~71556~~	~~200~~			
~~1,1,2-trichloroethane~~	~~79005~~	~~0.59~~	~~16~~		
~~1,1,2,2-tetrachloroethane~~	~~79345~~	~~0.17~~	~~4.0~~		
~~1,2-dichlorobenzene~~	~~95501~~	~~2,700~~	~~17,000~~		
~~1,2-dichloroethane~~	~~107062~~	~~0.38~~	~~37~~		
~~1,2-dichloropropane~~	~~78875~~	~~0.50~~	~~15~~		
~~1,2-diphenylhydrazine~~	~~122667~~	~~0.036~~	~~0.20~~		
~~1,2-trans-dichloroethylene~~	~~156605~~	~~700~~	~~140,000~~		
~~1,2,4-trichlorobenzene~~	~~120821~~	~~260~~	~~940~~		
~~1,2,4,5-tetrachlorobenzene~~	~~95943~~	~~0.97~~	~~1.1~~		
~~1,3-dichlorobenzene~~	~~541731~~	~~320~~	~~960~~		
~~1,3-dichloropropene~~	~~542756~~	~~10~~	~~1,700~~		
~~1,4-dichlorobenzene~~	~~106467~~	~~400~~	~~2,600~~		
~~2-chloronaphthalene~~	~~91587~~	~~1,000~~	~~1,600~~		
~~2-chlorophenol~~	~~95578~~	~~81~~	~~150~~		
~~2-methyl-4,6-dinitrophenol~~	~~534521~~	~~13~~	~~280~~		
~~2,3,7,8-TCDD (Dioxin)~~	~~1746016~~	~~5.0 E - 9~~	~~5.1 E - 9~~		
~~2,4-D~~	~~94757~~	~~70~~			
~~2,4-dichlorophenol~~	~~120832~~	~~77~~	~~290~~		
~~2,4-dimethylphenol~~	~~105679~~	~~380~~	~~850~~		
~~2,4-dinitrophenol~~	~~51285~~	~~69~~	~~5,300~~		
~~2,4-dinitrotoluene~~	~~121142~~	~~0.11~~	~~3.4~~		
~~2,4,5-TP (Silvex)~~	~~93721~~	~~10~~			
~~2,4,5-trichlorophenol~~	~~95954~~	~~1,800~~	~~3,600~~		
~~2,4,6-trichlorophenol~~	~~88062~~	~~1.4~~	~~2.4~~		
~~3,3'-dichlorobenzidine~~	~~91941~~	~~0.021~~	~~0.028~~		
~~4,4'-DDD~~	~~72548~~	~~0.00031~~	~~0.00031~~		
~~4,4'-DDE~~	~~72559~~	~~0.00022~~	~~0.00022~~		
~~4,4'-DDT~~	~~50293~~	~~0.00022~~	~~0.00022~~	~~1.1~~	~~0.001~~

~~[1]CAS = Chemical Abstracts Service.~~

~~[2]Water quality criteria in µg/L unless reported in different units.~~

~~[3]Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.~~

~~[4]DWS = Domestic Water Supply Source.~~

~~[5]Fish = Fish Consumption.~~

~~[6]The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/l if aquatic life has not been shown to be adversely affected.~~

~~*Hard = Hardness as mg/l $CaCO_3$.~~]

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:

(a) Fecal coliform content or Escherichia coli content shall not exceed 200 colonies per 100 ml or 130 colonies per 100 ml respectively as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for fecal coliform or 240 colonies per 100 ml for Escherichia coli. [~~These limits shall be applicable during the recreation season of May 1 through October 31.~~] Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year; and[~~.~~]

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; nor exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period; and[~~.~~]

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 8. Outstanding State Resource Waters. This designation category includes certain unique waters of the commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360;

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287 [~~et seq.~~];

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet; and

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544 [~~et seq~~].

(b) Permissible consideration. Other surface waters shall be considered for inclusion in this category [~~may be included in this category as determined by the cabinet~~] if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics,[~~;~~] or fulfill two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna;

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or

c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection. The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed. The cabinet shall determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 10:026[~~5:026~~], shall be applicable to these waters.

(b) Outstanding state resource waters that are listed as Exceptional Waters in 401 KAR 10:030, Section 1(2) shall have dissolved oxygen maintained at a minimum concentration of six and zero-tenths (6.0) mg/l as a twenty-four (24) hour average and an instantaneous minimum concentration of not less than five and zero-tenths (5.0) mg/l.

(c)1. If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination.

2. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated [~~to the satisfaction of the cabinet,~~] that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species that[~~which~~] the water supports.

(d)[~~(c)~~] Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 10:026[~~5:026~~].

(3) Determination of designation.

(a) A[~~Any~~] person may present a proposal to designate certain waters under this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 10:026[~~5:026~~], Section 3(3)(a) through (h).

(b)1. The cabinet shall review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation.

2. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 10:026[~~5:026~~].

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. **(1) The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded.**

(2) These waters shall be subject to all applicable provisions of 401 KAR 10:001, 10:026, 10:029, 10:030, and this administrative regulation, except for those criteria in paragraphs (a) and (b) of this subsection.

(a) Dissolved oxygen. Concentrations shall average at least five and zero-tenths (5.0) mg/l per calendar day and shall not be less than four and zero-tenths (4.0) mg/l except during the April 15 - June 15 spawning season when a minimum of five and one-tenth (5.1) mg/l shall be maintained.

(b) Maximum allowable instream concentrations for nitrite-nitrogen for the protection of human health shall be one and zero-tenths (1.0) mg/l and shall be met at the edge of the assigned mixing zone [~~Requirements and limits shall apply as contained in the Ohio River Valley Water Sanitatino Commission's Pollution Control Standards for Dishcharges to the Ohio River, 2006 Revision~~].[~~The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded. These waters are subject to all applicable provisions of 401 KAR 5:002, 5:026, 5:029, 5:030, and this administrative regulation.~~

~~(1) Dissolved oxygen. Concentrations shall average at least five and zero-tenths (5.0) mg/l per calendar day and shall not be less than four and zero-tenths (4.0) mg/l except during the April 15-June 15 spawning season when a minimum of five and one-tenth (5.1) mg/l shall be maintained.~~

~~(2) Temperature.~~

~~(a) Allowable stream temperatures are:~~

~~Month/Date~~	~~Period Average (°F)~~	~~Instantaneous Maximum (°F)~~
~~January 1-31~~	~~45~~	~~50~~
~~February 1-29~~	~~45~~	~~50~~
~~March 1-15~~	~~51~~	~~56~~

~~March 16-31~~	~~54~~	~~59~~
~~April 1-15~~	~~58~~	~~64~~
~~April 16-30~~	~~64~~	~~69~~
~~May 1-15~~	~~68~~	~~73~~
~~May 16-31~~	~~75~~	~~80~~
~~June 1-15~~	~~80~~	~~85~~
~~June 16-30~~	~~83~~	~~87~~
~~July 1-31~~	~~84~~	~~89~~
~~August 1-31~~	~~84~~	~~89~~
~~September 1-15~~	~~84~~	~~87~~
~~September 16-30~~	~~82~~	~~86~~
~~October 1-15~~	~~77~~	~~82~~
~~October 16-31~~	~~72~~	~~77~~
~~November 1-30~~	~~67~~	~~72~~
~~December 1-31~~	~~52~~	~~57~~

~~(b) A successful demonstration conducted for thermal discharge limitations under Section 316(a) of the Clean Water Act shall constitute compliance with these temperature criteria.~~

~~(3) Maximum allowable instream concentrations for specific pollutants for the protection of human health are listed in Table 2 of subsection (4) of this section. They shall be met at the edge of the assigned mixing zone.~~

~~(4) To provide for the protection of warm water aquatic life habitats, the criteria in Table 2 of this subsection shall be met at the edge of the assigned mixing zone.~~

~~Table 2~~

~~Pollutant~~	~~Human Health Criteria in µg/L[1]~~	~~Warm Water Aquatic Habitat Criteria in µg/L[2]~~	
		~~Acute~~	~~Chronic~~
~~Arsenic~~	~~10.0~~		
~~Barium~~	~~2,000~~		
~~Cadmium~~	~~250,000~~	~~e(1.0166 (ln Hard*)-3.924)~~	~~e(0.7409 (ln Hard*)-4.719)~~
~~Chloride~~			
~~Chromium, hexavalent~~		~~16~~	~~11~~
~~Copper~~		~~e(0.9422 (ln Hard*)-1.700)~~	~~e(0.8545 (ln Hard*)-1.702)~~
~~Cyanide, Free~~		~~22~~	~~5.2~~
~~Fluoride~~	~~2,000~~		
~~Lead~~		~~e(1.273 (ln Hard*)-1.460)~~	~~e(1.273 (ln Hard*)-4.705)~~
~~Mercury~~			
~~Nickel~~		~~e(0.8460 (ln Hard*)+2.255)~~	~~e(0.8460 (ln Hard*)+0.0584)~~
~~Nitrite + Nitrate Nitrogen~~	~~10,000~~		
~~Nitrite – Nitrogen~~	~~1,000~~		
~~Phenolics~~	~~5~~		
~~Silver~~	~~100~~	~~e(1.72 (ln Hard*)-6.59)~~	
~~Sulfate~~	~~250,000~~		
~~Zinc~~		~~(0.8473 (ln Hard*)+0.884)~~	~~e(0.8473 (ln Hard*)+0.884)~~

~~[1]Metal concentrations, for the purposes of human health criteria, shall be total recoverable values except hexavalent chromium, which is dissolved.~~

~~[2]Metal concentrations, for the purposes of warm water aquatic habitat criteria, shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.~~

~~*Hard = Hardness as mg/l $CaCO_3$~~

~~(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.~~]

Section 10. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate. [~~This determination shall be made on a case-by-case basis with respect to a specific surface water following an analysis for each area.~~]

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year- round basis due to natural conditions[,] or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.

(a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be[~~are~~] consistent with those outlined in Chapter 3 of [~~"~~]Water Quality Standards Handbook[~~"~~], EPA, 1994[~~, incorporated by reference in Section 12 of this administrative regulation~~].

(b) In addition, an applicant shall supply the documentation listed in 401 KAR 10:026[~~5:026~~], Section 3.

(3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it is[~~can be~~] demonstrated that natural, ephemeral, intermittent, or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters shall be[~~are~~] attained and maintained.

(5) All exceptions to water quality criteria shall be subject to review at least every three (3) years.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026[~~5:026~~].

Section 11. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, [~~following the guidelines i~~][~~"~~][~~Interim Economic Guidance for Water Quality Standards Workbook~~][~~"~~][~~, EPA March 1995~~][~~incorporated by reference in Section 12. of this administrative regulation~~], that KPDES permit compliance with existing instream criteria **cannot be attained because of factors specified in 401 KAR 10:026, Section 2(4)(a) through (f).** [~~shall result in substantial and widespread adverse economic and social impacts.~~]

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters shall be[~~are~~] attained and maintained.

(4) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet the[~~that a reasonable~~] effort the discharger[~~has been~~] made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Water Quality Standards Handbook-Chapter 3", EPA August 1994, Publication EPA-823-B-94-005a, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; and

(b) "Interim Economic Guidance for Water Quality Standards Workbook", EPA March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

[~~(c) Ohio River Valley Water Sanitation Commission's "Pollu-~~

~~tion Control Standards for Discharges to the Ohio River", 2006 Revision.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, **200 Fair Oaks Lane** [~~14 Reilly Road~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 12, 2008 at noon

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410 fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the protection of public health, aquatic habitat, and designated uses of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation describes the criteria applied in 401 KAR 10:026 to the surface waters of the Commonwealth. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by providing specific criteria and water quality standards for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates water quality criteria to reflect scientific developments. Water quality criteria for domestic water supply sources have been revised to include 2 new limits, 14 stricter limits, and 4 less strict limits. Water quality criteria for fish tissue have been revised to include 2 new limits, 13 stricter limits, and 2 less strict limits. Water quality criteria for warm water aquatic habitat acute values have been revised to include 3 new limits and 2 stricter limits. Water quality criteria for warm water aquatic habitat chronic values have been revised to include 2 new limits, 2 stricter limits, and eliminate 1 limit. Criteria for radionuclides, which are based on Maximum Contaminant Levels for finished drinking water in the Safe Drinking Water Act, have been moved from minimum criteria applicable to all waters to apply only to domestic water supply use. Dissolved oxygen criteria of 6.0 mg/l average and 5.0 mg/l minimum have been added for Outstanding State Resource Water.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to revise criteria to protect human health and to meet federal recommendations. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water qualit standards every three years and comply with the programmat requirements of 40 C.F.R. Part 131. This administrative regulatio is being amended as part of the triennial review.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100, which requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment establishes procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing revised and up-to-date criteria and water quality standards for the protection of surface waters of the Commonwealth in accordance with the intent of the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will not affect permitted facilities until they apply for reissuance of their KPDES permits. The amendment will affect any new, previously unpermitted wastewater dischargers. Municipalities with approved pretreatment programs set local limits for their industrial dischargers. These dischargers may be affected by this amended administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The revised water quality criteria will be implemented at the time of permit issuance at existing facilities and new dischargers and expanded facilities will comply with the revisions. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established and less cost will be incurred where criteria have been lowered or eliminated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Therefore, it is not possible to determine quantitative costs to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less costs may be incurred where criteria are less stringent than previously or where criteria have been eliminated. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(5)Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement. Implementation costs should remain relatively constant.

(b) On a continuing basis: No major costs are anticipated. The cabinet, in implementing the requirements of this amended administrative regulation, will internalize associated costs with normal budget appropriations. The existing budget for the Division of Water utilizes approximately $800,000 in general funds and approximately $240,000 in federal funds to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees or funding increases are not anticipated to be necessary to the implemen-

tation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor directly nor indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. 401 KAR 10:031 provides special requirements for dischargers to cold water aquatic habitat. Any waterway categorized as an outstanding state resource water will also have special requirements according to this administrative regulation, and more stringent dissolved oxygen criteria have been added for Outstanding State Resource Water.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amended administrative regulation relates to local governments' wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other Explanation: This amended administrative regulation sets forth protective criteria for instream uses designated by the cabinet (see 401 KAR 10:026). Local governments will be required to discharge effluents which assure attainment of the receiving surface water's designated uses. The costs or savings of this amended administrative regulation would ordinarily be passed through to users; however, a local government that owns a public wastewater treatment system could elect to absorb some or all of the costs or savings. The revised water quality criteria will be implemented at the time of permit issuance at existing facilities and new dischargers and expanded facilities will comply with the revisions. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established and less costs may be incurred where criteria are less stringent than previously or where criteria have been eliminated. Some dischargers with KPDES permits may apply to increase discharge limits, resulting in more antidegradation reviews

FEDERAL MANDATE ANALYSIS COMPARISON

Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every 3 years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards. 401 KAR 10:001, 10:026, 10:029, 10:030, and 10:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, federal regulation 40 CFR 131.10 requires states to take into consideration the value of public water supply, protection and propagation of fish shellfish and wildlife, and recreation in and on the water. Some higher quality waters (Outstanding State Resource Waters, or OSRW) require additional measures to protect that quality. Thus, Kentucky's structure of designated uses is not more stringent than the federal mandate. Most states have regulations similar to Kentucky's designated uses: aquatic life, human health for drinking water and consumption of fish tissue, recreation, and a category similar to our OSRW, and have had these designated uses approved by EPA. EPA is promoting and has published a guidance document on the concept of a tiered aquatic life use framework, which Kentucky is proposing by adding more excellent waters to the OSRW use.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements. Please see the agency's response to question #4.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 50:066. Conformity of transportation plans, programs, and projects.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 23 C.F.R. Part 450, 40 C.F.R. 51.390, Part 93, 49 C.F.R. Part 613, 23 U.S.C. 109, 134, 42 U.S.C. 7506(c)(4), 49 U.S.C. 53

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, [~~40 C.F.R. 51.390, Part 93,~~] 42 U.S.C. 7506(c)(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes[~~requires~~] the Environmental and Public Protection Cabinet to promulgate[~~prescribe~~] administrative regulations for the prevention, abatement, and control of air pollution. [~~The federal regulation incorporated by reference in~~]This administrative regulation adopts the Federal Transportation Conformity Rules as codified in 40 C.F.R. Part 93 Subpart A and incorporates a guidance document that establishes [~~policy~~], criteria[~~,~~] and procedures for the interagency consultation process used in demonstrating conformity of federal transportation plans to the Kentucky State Implementation Plan.

Section 1. All transportation plans, transportation improvement plans, and projects subject to 40 C.F.R. 93, Subpart A, shall be found to conform to the Kentucky State Implementation plan before they are implemented. This finding of conformity shall be done in accordance with the consultation procedures outlined in the document "Transportation Conformity: A Guide for Interagency Consultation" that is incorporated by reference.[~~Definitions. As used in 40 C.F.R. 51.390, "EPA" means the U.S. Environmental Protection Agency~~].

Section 2. Incorporation by Reference. (1) "Transportation Conformity: A Guide for Interagency Consultation", **September** [~~May~~] 2008, is incorporated by reference.[~~40 C.F.R. 51.390, (40 C.F.R. 51, Subpart T), Conformity to State or Federal Implementa-~~

~~tion Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. (Federal Transit Laws), as published in the Federal Register, (62 FR 43801), August 15, 1997, is incorporated by reference.~~]

(2) This [~~The~~] material [~~incorporated by reference~~] may be [~~obtained,~~] inspected, [~~or~~] copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

[~~(3) Copies of the Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: September 15, 2008

FILED WITH LRC: September 15, 2008 at 10 a.m.

CONTACT PERSON: Ty Martin, Environmental Technologist I, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and email: ty.martin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ty Martin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for interagency consultation that shall be used between Metropolitan Planning Organizations, the Kentucky Transportation Cabinet, Federal Highway Administration, Federal Transit Administration, state and local air quality agencies, and the Environmental Protection Agency in making conformity determinations and developing applicable implementation plans.

(b) The necessity of this administrative regulation: The U.S. EPA is requiring all states and the District of Columbia to revise their State Implementation Plans (SIPs) to include procedures to be used for interagency consultation between federal, state, and local transportation and air quality agencies in the determination of conformity of transportation plans, programs, and projects.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. A conformity determination means that the transportation plan, program, or project does not increase the severity or frequency of violation of transportation-related National Ambient Air Quality Standard (NAAQS).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By ensuring that transportation plans, programs, and projects do not increase the severity or frequency of violations of transportation-related NAAQS, the entities that participate in the interagency consultation procedures outlined in this administrative regulation will help ensure the timely attainment of NAAQS in non-attainment areas and the continuing improvement of air quality in areas with maintenance plans.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates a reference to an outdated federal regulation and incorporates a document containing procedures that shall be followed in the consultation between agencies that must be made before a finding of conformity is made for a transportation plan, program, or project.

(b) The necessity of the amendment to this administrative regulation: The previous version of this administrative regulation references a version of a federal regulation that is no longer current. The updated version of 40 C.F.R. 51.390 requires states to add interagency consultation procedures to be used in conformity determinations made for transportation plans, programs, and projects.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. A conformity determination for a transportation plan, program, or project means that that transportation plan, program, or project does not increase the severity or frequency of violations of transportation-related National Ambient Air Quality Standard.

(d) How the amendment will assist in the effective administration of statutes: The consultation procedures added by this amendment will allow for federal funding of transportation projects that do not prevent the timely attainment of the NAAQS in non-attainment areas in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Transportation Cabinet, Kentucky Division for Air Quality, Metropolitan Planning Organizations (MPOs), local air quality agencies, and other recipients of federal transportation funding have responsibilities in the conformity determination process, as spelled out by the document incorporated in this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a). List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The entities identified in question 3 will have to fulfill their roles in the interagency consultation process as defined in the guidance document incorporated by reference in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There should be no additional costs for the entities identified in question (3) as they are already performing the activities required of them by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Section 176 of the Clean Air Act limits federal funding of transportation plans, programs, and projects that would contribute to the frequency or severity of violations of any NAAQS in an area designated non-attainment or with a maintenance plan for any transportation-related criteria pollutant. By assuring all plans, programs, and projects in these areas do not contribute to the frequency or severity of violations, the agencies identified will ensure that they can receive federal funding for those plans, programs, and projects.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation only applies to agencies responsible for transportation plans, programs, and projects when those plans, programs, and projects are located in areas designated non-attainment, or with maintenance plans, for transportation-related criteria pollutants and their precursors, or to areas that contribute to violations of NAAQS in areas designated non-attainment, or with maintenance plans, for transportation-related criteria pollutants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Transportation Cabinet, Kentucky Division for Air Quality, Metropolitan Planning Organizations (MPOs), local air quality agencies, and other recipients of federal transportation funding have responsibilities in the conformity determination process, as spelled out by the document incorporated in this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224.20-110, 42 U.S.C. 7506(c)(4).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is 40 C.F.R. Part 51, Subpart T.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to include, in their implementation plan, procedures for interagency consultation among federal, state, and local entities, resolution of conflict, and public consultation in determining conformity of transportation plans, programs, and projects.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation is no more stringent than the federal regulation

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or requirements are not imposed.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amended After Comments)

907 KAR 1:015. Payments for outpatient hospital [~~outpatient~~] services.

RELATES TO: KRS 205.520, 216.380, 42 C.F.R. **400.203,** 440.2, 440.20(a), 447.321, 42 U.S.C. 1395l(h), **1396r-8(a)(7)**

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.637, 42 U.S.C. 1396a, 1396b, 1396d, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for outpatient hospital [~~outpatient~~] services.

Section 1. Definitions. (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and KRS 216.380.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) **"Federal financial participation" is defined in 42 C.F.R. 400.203.**

(4) "Finalized" means approved or final as determined by the Centers for Medicare and Medicaid Services (CMS).

(5)[~~(4)~~] "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 2, line 27 of the cost report by the charges reported on column 2, line 20 of the same schedule.

Section 2. In-State Outpatient Hospital Service Reimbursement. (1)(a) Except for critical access hospital services and outpatient hospital laboratory services, the department shall reimburse on an interim basis for in-state outpatient hospital services at a facility specific outpatient cost-to-charge ratio based on the facility's most recently filed cost report.

(b) An outpatient cost-to-charge ratio shall be expressed as a percent of the hospital's charges.

(2) A facility specific outpatient cost-to-charge ratio paid during the course of a hospital's fiscal year shall be designed to result in reimbursement, at the hospital's fiscal year end, equaling **ninety-two (92)** [~~ninety (90)~~] percent of a facility's total outpatient costs incurred during the hospital's fiscal year.

(3) Except as established in subsection (4) of this section:

(a) Upon **reviewing** [~~approving~~] an in-state outpatient hospital's as submitted cost report for the hospital's fiscal year, the department shall preliminarily settle reimbursement to the facility equal to **ninety-two (92)** [~~ninety (90)~~] percent of the facility's total outpatient costs, **excluding laboratory services,** incurred in the corresponding fiscal year; and

(b) Upon receiving **and reviewing** an in-state outpatient hospital's finalized cost report for the hospital's fiscal year, the department shall settle final reimbursement, **excluding laboratory services,** to the facility equal to **ninety-two (92)** [~~ninety (90)~~] percent of the facility's total outpatient costs incurred in the corresponding fiscal year.

(4)(a) Under no circumstances shall the department's total reimbursement for outpatient hospital services exceed the aggregate limit established in 42 C.F.R. 447.321.

(b) If projections indicate for a given state fiscal year that reim-

bursing for outpatient hospital services at **ninety-two (92)** [~~ninety (90)~~] percent of costs would result in the department's total outpatient hospital service reimbursement exceeding the aggregate limit established in 42 C.F.R. 447.321, the department shall proportionately reduce final outpatient hospital service reimbursement for each hospital to equal a percent of costs which shall result in total outpatient hospital reimbursement equaling the aggregate limit established in 42 C.F.R. 447.321.

(5) In accordance with 42 U.S.C. 1396r-8(a)(7), a hospital shall include the corresponding healthcare common procedure coding (HCPC) code when billing a revenue code of 250 through 261 or 634 through 636 for an outpatient hospital service.

Section 3. Out-of-State Outpatient Hospital Service Reimbursement. Excluding services provided in a critical access hospital **and laboratory services**, reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be **ninety-two (92)** [~~ninety (90)~~] percent of the average in-state outpatient hospital cost-to-charge ratio.

Section 4. Critical Access Hospital Outpatient Service Reimbursement. (1) The department shall reimburse for outpatient hospital services in a critical access hospital as established in 42 C.F.R. 413.70(b) through (d).

(2) A critical access hospital shall comply with the cost reporting requirements established in Section **6**[~~3~~] of this administrative regulation.

Section 5. Outpatient Hospital Laboratory Service Reimbursement. **(1)** The department shall reimburse for an in-state or out-of-state outpatient hospital laboratory service:

(a)[~~(1)~~] A rate equal to sixty-two (62) percent of the Medicare fee schedule rate if a Medicare rate exists for the service; or

(b)[~~(2)~~] By multiplying the facility's current outpatient cost-to-charge ratio by its billed **laboratory** charges if no Medicare rate exists for the service.

(2) Laboratory service reimbursement, in accordance with subsection (1) of this section, shall be:

(a) Final; and

(b) Not settled to cost.

(3) An outpatient laboratory hospital laboratory service shall be reimbursed in accordance with this section regardless of whether the service is performed in an emergency room setting or in a nonemergency room setting.

Section 6. Cost Reporting Requirements. (1) An in-state outpatient hospital participating in the Medicaid program shall submit to the department a copy of the Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1 and the Supplemental Medicaid Schedule KMAP-4 as follows:

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital; and

2. Within five (5) months after the close of the hospital's fiscal year; and

(b) Except as follows, the department shall not grant a cost report submittal extension:

1. The department shall grant an extension if an extension has been granted by Medicare. If an extension has been granted by Medicare, when the facility submits its cost report to Medicare it shall simultaneously submit a copy of the cost report to the department; or

2. If a catastrophic circumstance exists, as determined by the department (for example flood, fire, or other equivalent occurrence), the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) If a cost report indicates payment is due **by a hospital to the department, the hospital**[~~, a provider~~] shall submit the amount due or submit a payment plan request with the cost report.

(4) If a cost report indicates a payment is due **by the hospital to the department and the** [~~and~~ a] hospital fails to remit the amount due or request a payment plan, the department shall suspend future payment to the hospital until the hospital remits the payment or submits a request for a payment plan.

(5) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(6) A cost report submitted by a hospital to the department shall be subject to departmental audit and review.

(7) Within seventy (70) days of receipt from the Medicare intermediary, a hospital shall submit to the department a printed copy of the final Medicare-audited cost report including adjustments.

(8)(a) If it is determined that an additional payment is due **by a hospital** after a final determination of cost has been made by the department, the additional payment shall be due **by a hospital to the department within** sixty (60) days after notification.

(b) If a hospital does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 7. **Federal Financial Participation. A provision established in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision.**

Section 8. Appeals. A hospital may appeal a decision by the department regarding the application of this administration regulation in accordance with 907 KAR 1:671.

Section **9.** [~~8.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Worksheet E-3, Part III, Page 12, May 2004 edition";

(b) "Supplemental Medicaid Schedule KMAP-1", May 2004 edition; [~~and~~]

(c) "Supplemental Medicaid Schedule KMAP-4", May 2004 edition**; and**

(d) "Supplemental Medicaid Schedule KMAP-6", January 2007 edition.

(2) The material listed in subsection (1) of this section may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

[~~(2) "Current procedural terminology code" or "CPT code" means a code used for the reporting of medical services or procedures using the current procedural terminology developed by the American Medical Association.~~

~~(3) "Department" means the Department for Medicaid Services or its designee.~~

~~(4) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.~~

~~(5) "Level 1 service" means services billed using CPT code 99281.~~

~~(6) "Level 2 service" means services billed using CPT codes 99282 or 99283.~~

~~(7) "Level 3 service" means services billed using CPT codes 99284, 99285, 99291, or 99292.~~

~~(8) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 3, line 27 of the cost report by the charges reported on column 3, line 20 of the same schedule.~~

~~(9) "Revenue code" means a provider-assigned revenue code for each cost center for which a separate charge is billed.~~

~~(10) "Triage" means a medical screening and assessment billed using revenue code 451.~~

~~Section 2. Outpatient Hospital Services. (1) Except for a critical access hospital, for services provided on or after August 4, 2003, the Department for Medicaid Services shall reimburse a participating in-state hospital for outpatient services in accordance with this~~

~~subsection.~~

~~(a) For the following procedures, the rates shall be as follows:~~

~~1. Cardiac catheterization lab:~~

~~a. Unilateral - $1,478; or~~

~~b. Bilateral - $1,770;~~

~~2. Computed tomography scan - $479;~~

~~3. Lithotripsy - $3,737;~~

~~4. Magnetic resonance imaging - $593;~~

~~5. Observation room - $458; and~~

~~6. Ultrasound - $177.~~

~~(b) If multiple services listed in paragraph (a) of this subsection are provided, each service shall receive the corresponding rate established in paragraph (a) of this subsection.~~

~~(c) The department shall utilize the 1996 Medicare ambulatory surgical center groups to reimburse for an outpatient surgery. The following chart establishes the reimbursement rate for each corresponding surgical group:~~

~~Ambulatory Surgical Center Group~~	~~Reimbursement Rate~~
~~Group 1~~	~~$397~~
~~Group 2~~	~~$534~~
~~Group 3~~	~~$610~~
~~Group 4~~	~~$753~~
~~Group 5~~	~~$858~~
~~Group 6~~	~~$1,016~~
~~Group 7~~	~~$1,191~~
~~Group 8~~	~~$1,191~~

~~(d) Reimbursement for an outpatient surgery which does not have a surgical group rate shall be at a facility-specific outpatient cost-to-charge ratio.~~

~~(e) For multiple surgeries provided to the same recipient on the same day, only the surgery with the highest reimbursement rate established in paragraph (c) of this subsection, shall be paid.~~

~~(f) Except for the services listed in paragraph (g) of this subsection, all other services provided to the same recipient on the same day shall be reimbursed in accordance with paragraphs (a), (b), (c), (d), and (e) of this subsection.~~

~~(g) The following shall be reimbursed on an interim basis at a facility-specific outpatient cost-to-charge ratio for the following revenue codes:~~

~~Service~~	~~Revenue Code~~
~~Pharmacy~~	~~250, 251, 252, 254, 255, 258, 260, 261, 634, 635, 636~~
~~X-ray~~	~~320, 321, 322, 323, 324, 342, 400, 403, 920~~
~~Supplies~~	~~270, 271, 272, 274, 275, 621, 622, 623~~
~~EKG/ECG and Therapeutic Services~~	~~410, 412, 413, 420, 421, 422, 423, 424, 440, 441, 442, 443, 460, 470, 471, 472, 480, 482, 510, 512, 516, 517, 730, 731, 732, 740, 901, 922, 940, 942, 943~~
~~Room and Miscellaneous~~	~~280, 290, 370, 371, 372, 374, 700, 710, 750, 761, 890, 891, 892, 893, 921~~
~~Dialysis~~	~~821, 831, 841~~
~~Chemotherapy~~	~~330, 331, 332, 333, 334, 335~~

~~(h) Services reimbursed in accordance with paragraph (g) of this subsection shall be settled to cost at year end.~~

~~(2) Except for pharmacy services billed using revenue codes 250, 251, 252, 254, 255, 258, 260, 261, 634, 634, or 636, medical or surgical supplies billed using revenue codes 270-275, and triage billed using revenue code 451, a hospital shall include all applicable CPT and HCPCS codes on a claim.~~

~~(3) Except for services listed in subsection (1)(g) of this section, beginning August 4, 2003, an out-of-state hospital providing outpatient services shall be reimbursed in accordance with subsection (1) of this section.~~

~~(4) Services listed in subsection (1)(g) of this section provided by an out-of-state hospital shall be reimbursed by multiplying the average outpatient cost-to-charge ratio of in-state hospitals, excluding critical access hospitals, by billed charges.~~

~~(5)(a) An outpatient hospital laboratory service shall be reimbursed at the Medicare-established technical component rate in accordance with 907 KAR 1:029.~~

~~(b) An outpatient hospital laboratory service with no established Medicare rate shall be reimbursed by multiplying a facility-specific outpatient cost-to-charge ratio by billed charges.~~

~~(6) A critical access hospital shall be reimbursed on an interim basis:~~

~~(a) By multiplying charges by the lesser of:~~

~~1. The Medicare cost-to-charge ratio issued by the Medicare fiscal intermediary in effect at the time; or~~

~~2. The Medicaid outpatient cost-to-charge ratio;~~

~~(b) For a laboratory service in accordance with the Medicare fee schedule; and~~

~~(c) With a settlement to cost at the end of the year.~~

~~(7) A hospital providing outpatient services shall be required to submit a cost report within five (5) months after a hospital's fiscal year end.~~

~~(8) Failure to provide a cost report within the timeframe established in subsection (7) of this section shall result in a suspension of future payment until the cost report is received by the department.~~

~~(9) If a cost report indicates payment is due, a provider shall remit payment in full or a request for a payment plan with the cost report.~~

~~(10) If a cost report indicates a payment is due and a hospital fails to remit a payment or request for a payment plan, the department shall suspend future payment to the hospital.~~

~~(11) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.~~

~~(12) If it is determined that an additional payment is due after a final determination of cost has been made by the department, the additional payment shall be due sixty (60) days after notification.~~

~~(13) If a hospital fails to submit an additional payment in accordance with subsection (12) of this section, the department shall suspend future payment to the hospital.~~

~~Section 3. Supplemental Payments. (1) In addition to a payment received in accordance with Section 2 of this administrative regulation, a nonstate government hospital, as defined in 42 C.F.R. 447.321(2), whose county has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Sections 2 and 4 of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.321.~~

~~(2) A payment made under this section shall:~~

~~(a) Not be subject to the cost-settlement provisions established in Section 2 of this administrative regulation; and~~

~~(b) Apply to a service provided on or after April 2, 2001.~~

~~Section 4. In-state and Out-of-state Emergency Room Services. (1) Services provided in an emergency room shall be reimbursed as follows:~~

~~(a) The triage service reimbursement rate shall be twenty (20) dollars;~~

~~(b) The level 1 service reimbursement rate shall be eighty-two (82) dollars;~~

~~(c) The level 2 service reimbursement rate shall be $164; and~~

~~(d) The level 3 service reimbursement rate shall be $264.~~

~~(2) In addition to the rate paid for services listed in subsection (1) of this section, the following shall be paid at the following rates:~~

~~(a) Cardiac catheterization lab:~~

~~1. Unilateral - $1,478; or~~

~~2. Bilateral - $1,770;~~

~~(b) Computed tomography scan - $479;~~

~~(c) Lithotripsy - $3,737;~~

~~(d) Magnetic resonance imaging - $593;~~

~~(e) Observation room - $458; and~~

~~(f) Ultrasound - $177.~~

~~(3) If multiple services listed in subsection (2) of this section are provided, each service shall receive the corresponding rate established in subsection (2) of this section.~~

~~(4) Except as listed in subsection (5) of this section, a separate payment shall not be made for the services or supplies listed in Section 2(1)(g) of this administrative regulation.~~

~~(5) A thrombolytic agent shall be reimbursed at the hospital's acquisition cost.~~

~~(6) A service provided in an emergency room of a critical access hospital shall be reimbursed in accordance with Section 2(6) of this administrative regulation.~~

~~Section 5. Appeals. A hospital may appeal a decision as permitted by 907 KAR 1:671.~~

~~Section 6. Incorporation by Reference. (1) "Supplemental Worksheet E-3, Part III, Page 12, November 1992 edition" is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

ELIZABETH A JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 15, 2008

FILED WITH LRC: September 15, 2008 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darlene Burgess (502) 564-6511 or Stuart Owen (502) 564-620

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse hospitals for the provision of outpatient services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: DMS is implementing a cost-based reimbursement which will consist of a facility-specific cost to charge ratio on an interim basis followed by a preliminary settlement and final settlement. Initially, DMS proposed settling to ninety (90) percent of costs but as a result of further analysis (and via this amendment after comments) DMS is elevating the settlement to ninety-two (92) percent of costs. Other amendments include: eliminating flat rates for emergency room care; removing ambulatory surgical center care reimbursement provisions from this administrative regulation as ambulatory surgical care reimbursement is addressed in 907 KAR 1:008; noting that reimbursement shall not exceed the federal limit which is established in 42 C.F.R. 447.321.The amendment after comments clarifies various existing policies, establishes that policies are contingent upon the provision of federal financial participation to the department, and adds a form to the material incorporated by reference. Outpatient services in a critical access hospital will continue to be reimbursed as mandated in federal regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to replace the existing diverse and complex reimbursement methodology with a facility-specific reimbursement model equal to ninety-two (92) percent of a facility's costs after settlement. Additionally, the amendment deletes ambulatory surgical center reimbursement provisions as those are established in 907 KAR 1:008. The reimbursement model established via the amendment complies with the federal law, 42 U.S.C. 1396a(a)(30), imposed on state Medicaid programs which requires state Medicaid program to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." The amendment after comments is necessary to clarify existing policy as well as to maintain the viability of the Medicaid program by clarifying that policies are contingent upon the provision of federal financial participation by the Centers for Medicare and Medicaid Services (CMS) to the department. CMS provides approximately seventy (70) of program funding to the department - compared to fifty (50) percent of administrative funding. The department, as part of its mission to serve the citizens of the Commonwealth of Kentucky in a fiscally responsible manner, must strive to ensure that program policies are contingent upon receipt of federal funding. Failure to maintain this safe guard would jeopardize the health, safety and welfare of recipients of Medicaid program services as well as impose an injurious and unsound financial burden on the citizens of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing a facility-specific reimbursement resulting in a final settlement equal to ninety-two (92) percent of a facility's cost. Additionally, the amendment conforms to the authorizing statutes by eliminating ambulatory surgical center reimbursement provisions as they are established in 907 KAR 1:008, clarifying existing policy, and by rendering policies contingent upon federal financial participation in order to comply with KRS 205.520(3).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statues by establishing a facility specific reimbursement methodology resulting in a final settlement equal to ninety-two (92) percent of a facility's costs. Additionally, the amendment will assist in the effective administration of the authorizing statutes by eliminating ambulatory surgical center reimbursement provisions as those provisions are established in 907 KAR 1:008, clarifying policy and by rendering policies contingent upon federal financial participation in order to comply with KRS 205.520(3).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect all hospitals providing outpatient services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Outpatient facilities will continue to have to submit cost reports; however, the cost report will now be the primary basis for their reimbursement. Regulated entities will not have to take additional action as a result of the amendment after comments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment and the amendment after comments do not impose a cost on regulated entities; however, DMS expects in aggregate to realize savings from the amendment. DMS anticipates that some outpatient hospitals will receive an increase in reimbursement as a result of the amendment and that others will receive a decrease in reimbursement. The reimbursement established in this administrative regulation is reasonable, just, complies

with federal requirements and is the product of careful analysis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Outpatient facilities should benefit by receiving an interim reimbursement more closely coinciding with ninety-two (92) percent of their actual costs which in turn should result in less money owed or due at final cost settlement. The initial amendment proposed a settlement to ninety (90) percent of costs; however, DMS is elevating the settlement to ninety-two (92) percent via the amended after comments administrative regulation. Analysis subsequent to the initial amendment indicates that a ninety (90) percent settlement may result in a reimbursement decrease; thus, DMS is elevating the settlement to ninety-two (92) percent of costs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS initially proposed that a settlement to ninety (90) percent of costs would be budget neutral. Subsequent to the initial amendment, analysis indicated that ninety (90) percent of costs may prove a decrease in reimbursement and, thus, not be budget neutral. Consequently, DMS is elevating the cost settlement to ninety-two (92) percent of costs. The issue is clouded by the fact that costs reports available to DMS do not capture all costs as the prior methodology was partly cost-based and partly flat rate-based. As the flat rate components were not captured on cost reports, DMS and the agents with whom it employs to perform reimbursement calculations and analysis, relied on other data sources to complete the outpatient hospital cost portrait. A graphically clear picture will not be available until after a full year of cost reports, under the new methodology, are available. Future analysis may reveal that reimbursing at ninety-two (92) percent of costs exceeds budget neutrality. If this occurs, DMS may move, via a future amendment, to lower the settlement percent accordingly. Additionally, DMS notes that costs typically increase; thus, a fixed percent of rising costs would result in a monetary increase for facilities. DMS intends to actively monitor and analyze the consequences of the new proposed methodology.

(b) On a continuing basis: DMS initially proposed that a settlement to ninety (90) percent of costs would be budget neutral. Subsequent to the initial amendment, analysis indicated that ninety (90) percent of costs may prove a decrease in reimbursement and, thus, not be budget neutral and DMS is elevating the cost settlement to ninety-two (92) percent of costs. The issue is clouded by the fact that costs reports available to DMS do not capture all costs as the prior methodology was partly cost-based and partly flat rate-based. As the flat rate components were not captured on cost reports, DMS and the agents with whom it employs to perform reimbursement calculations and analysis, relied on other data sources to complete the outpatient hospital cost portrait. A graphically clear picture will not be available until after a full year of cost reports, under the new methodology, are available. Future analysis may reveal that reimbursing at ninety-two (92) percent of costs exceeds budget neutrality. If this occurs, DMS may move, via a future amendment, to lower the settlement percent accordingly. Additionally, DMS notes that costs typically increase; thus, a fixed percent of rising costs would result in a monetary increase for facilities. DMS intends to actively monitor and analyze the consequences of the new proposed methodology.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment, including the amendment after comments, does not establish any fees, nor does it directly or indirectly increase any fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment, including the amendment after comments, does not establish or increase any fees.

(9) Tiering: Is tiering applied? Critical access outpatient hospital reimbursement differs from other outpatient hospital reimbursement as critical access hospital reimbursement is established in federal regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All hospitals providing outpatient hospital services including the county and state owned are affected by this amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520, KRS 194A.030, 194A.050, 205.560, 205.637, 42 U.S.C. 1396a, 1396b, 1396d, 1396r-8(a), 42 C.F.R. 400.203, 440.20, and 447.321.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not expected to generate additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS initially proposed that a settlement to ninety (90) percent of costs would be budget neutral. Subsequent to the initial amendment, analysis indicated that ninety (90) percent of costs may prove a decrease in reimbursement and, thus, not be budget neutral. Consequently, DMS is elevating the cost settlement to ninety-two (92) percent of costs. The issue is clouded by the fact that costs reports available to DMS do not capture all costs as the prior methodology was partly cost-based and partly flat rate-based. As the flat rate components were not captured on cost reports, DMS and the agents with whom it employs to perform reimbursement calculations and analysis, relied on other data sources to complete the outpatient hospital cost portrait. A graphically clear picture will not be available until after a full year of cost reports, under the new methodology, are available. Future analysis may reveal that reimbursing at ninety-two (92) percent of costs exceeds budget neutrality. If this occurs, DMS may move, via a future amendment, to lower the settlement percent accordingly. Additionally, DMS notes that costs typically increase; thus, a fixed percent of rising costs would result in a monetary increase for facilities. DMS intends to actively monitor and analyze the consequences of the new proposed methodology.

(d) How much will it cost to administer this program for subsequent years? DMS initially proposed that a settlement to ninety (90) percent of costs would be budget neutral. Subsequent to the initial amendment, analysis indicated that ninety (90) percent of costs may prove a decrease in reimbursement and, thus, not be budget neutral. Consequently, DMS is elevating the cost settlement to ninety-two (92) percent of costs. The issue is clouded by the fact that costs reports available to DMS do not capture all costs as the prior methodology was partly cost-based and partly flat rate-based. As the flat rate components were not captured on cost reports, DMS and the agents with whom it employs to perform reimbursement calculations and analysis, relied on other data sources to complete the outpatient hospital cost portrait. A graphically clear picture will not be available until after a full year of cost reports, under the new methodology, are available. Future analysis may reveal that reimbursing at ninety-two (92) percent of costs exceeds budget neutrality. If this occurs, DMS may move, via a future amendment, to lower the settlement percent accordingly. Additionally, DMS notes that costs typically increase; thus, a fixed percent

of rising costs would result in a monetary increase for facilities. DMS intends to actively monitor and analyze the consequences of the new proposed methodology.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440.20 and 447.321 address outpatient hospital reimbursement provisions. 42 C.F.R. 400.203 establishes a provision regarding procedure coding.

2.State compliance standards. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 addresses Medicaid reimbursement. KRS 205.637 addresses Medicaid reimbursement to county-owned and operated hospitals. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(30)(A) requires a state to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." Additionally, 42 C.F.R. 447.321 establishes the upper payment limit for outpatient hospital reimbursement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter requirements than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter requirements than the federal requirements.

ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 35, NUMBER 4
WEDNESDAY, OCTOBER 1, 2008

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet October 14, 2008 at 10 a.m. in room 149 Capitol Annex. See tentative agenda on pages 705-707 of this Administrative Register.

The **Education Assessment and Accountability Review Subcommittee** is tentatively scheduled to meet Tuesday, October 14, 2008 at 10:00 a.m. in Room 131 of the Capitol Annex. 703 KAR 5:070 and 703 KAR 5:080 are on the EARRS Agenda.

Part 2 of 2

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Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:200. Go Higher Grant Program.

RELATES TO: KRS 164.740, 164.744(2), 164.753(4), 164.7535, 164.780, 164.785

STATUTORY AUTHORITY: KRS 164 746(6), 164.748(4), 164.7535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. This administrative regulation establishes application procedures and selection criteria for the administration of the Go Higher Grant Program.

Section 1. Definitions. (1) "Demonstrated financial need" means an expected family contribution (EFC) of no more than 150% of the CAP Grant EFC as set forth in 11 KAR 5:145, Section 1.

(2) "Eligible institution" is defined by KRS 164.740(3).

(3) "Eligible student" is defined by KRS 164.740(5).

(4) "Half-time enrollment" means enrollment in a minimum of six (6) hours of course work.

Section 2. Eligibility Criteria. In order to be eligible to receive grant funds under this program, an individual shall:

(1) Be age twenty-four (24) or older by July 1 prior to the start of the first term during which the award will be used,

(2) Be enrolled at an eligible institution;

(3) Have enrollment of less than half-time during the first semester in which the grant is awarded,

(4) Have demonstrated financial need;

(5) Be enrolled as an undergraduate student;

(6) Not have earned a first baccalaureate degree;

(7) Be a Kentucky resident;

(8)[~~(6)~~] Be a U.S. citizen, national or permanent resident; and

(9)[~~(7)~~] Not be incarcerated at either the time of application or receipt of an award.

Section 3. Application Procedure. (1) In order for an eligible student to be considered for an award under this program, the student shall complete:

(a) The Go Higher Grant Program Application available through the Authority; and

(b) The Free Application for Federal Student Aid (FAFSA) as required by 11 KAR 4:080, Section 2.

(2) The priority deadline for applications shall be July 1. Applications shall be accepted after that date with awards made until funds are exhausted.

Section 4. Awards. (1) An eligible student recipient shall receive an award under this program for only one (1) academic year.

(2) The maximum award amount under this program shall be $1,000 per recipient.

(3) The amount of the award under this program for the first semester of the recipient's enrollment shall be equal to:

(a) The cost of tuition at the participating institution, not to exceed the maximum award amount; and

(b) A book allowance of fifty (50) dollars per credit hour of enrollment, not to exceed the maximum award amount.

(4) The amount of the award under this program for the second semester of the recipient's enrollment, if any, shall be equal to the difference between the maximum award amount under this program and the amount received during the recipient's first semester of enrollment up to the cost of tuition and book allowance.

(5) In making awards under this program, priority shall be given to eligible applicants who have received a General Education Development (GED) Certificate.

Section 5. Disbursement Procedures. (1) Grant funds shall be disbursed by the authority to the participating institution in the form of a single check, made payable to the participating institution, or by electronic funds transfer delivered to the participating institution for subsequent delivery for application to the account of the award recipient.

(2) Within thirty (30) days following receipt of the eligibility verification file, the disbursement of grant funds by the authority to the participating institution shall be made for subsequent application to the account of the award recipient.

Section 6. Reporting and Repayment Requirements. (1) The school shall verify enrollment to the Authority after the time for adding or dropping classes at the institution has passed.

(2) If a grant recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an over-award and a full refund or repayment of the award shall be required.

(3) If the institution is unable to document the student's last date of attendance, any grant disbursement for that award period shall be subject to full refund and repayment.

(4) If, at any time, a grant recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full grant award shall be subject to cancellation, if not yet disbursed, or refund and repayment if the grant has already been disbursed.

(5) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(6) If a refund is due from the participating institution or a repayment is due from a student, the participating institution shall transmit to the authority the refund and shall report:

(a) The student's name and Social Security number;

(b) The reason for the refund or repayment;

(c) The date of enrollment status change;

(d) The academic term and award period; and

(e)The calculation used for determining the refund or repayment.

(7) Failure of the institution to make restitution if required shall, without precluding other remedies, be deemed cause for limitation, suspension or termination of the participation of the institution in accordance with 11 KAR 4:020.

Section 7. Incorporation by Reference. (1) The "Go Higher Grant Program Application", December 2006, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY SHROAT, Chair

APPROVED BY AGENCY: August 20, 2008

FILED WITH LRC: September 11, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2008 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-7293, phone (502) 696-7298, fax (502) 696-7293

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application procedures and selection criteria for the Go Higher Grant program pursuant to KRS 164.748(4).

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish a grant program for non-traditional students as provided in KRS 164.744(2) and 164.753(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing a new grant program, this administrative regulation will assist the Authority in carrying out its statutory mandate.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by requiring that a recipient must not have previously earned a college degree in order to be eligible for an award hereunder.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to insure that the purpose of the program – namely, encouraging college attendance by non-traditional students who might otherwise not enroll in post-secondary education – is achieved by removing from eligibility those individuals who have already earned a college degree.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by altering the eligibility criteria to insure the purpose of the program is fulfilled.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by making the grant program available to the targeted population only – those with little or no previous college attendance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All otherwise eligible individuals who have earned college degrees will be affected by this amendment in that they will no longer be eligible for an award under this program.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: No action will be required of the students impacted by this regulation in order to comply therewith.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No action will be required of the students impacted by this regulation in compliance therewith.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None. The impacted individuals are ineligible for benefits under this program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: Same as (5)(a)

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for this grant program is provided through a General Fund appropriation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.746(6), 164.748(4), 164.7535.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.740, 164.744(2), 164.753(3), 164.769

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Educa-

tion Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Critical shortage area" is defined in KRS 164.769(2)(a).

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date thereon.

(4) "Eligible program of study" is defined in KRS 164.769(2)(b).

(5)[~~(4)~~] "Expected family contribution" is defined in KRS 164.769(2)(c).

(6)[~~(5)~~] "Kentucky Teacher Internship Program or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:

(a) Required by KRS 161.030 and established in 16 KAR 7:010; and

(b) Also referenced as the beginning teacher internship.

(7)[~~(6)~~] "Participating institution" is defined in KRS 164.769(2)(d).

(8)[~~(7)~~] "Professional Teaching Certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.

(9)[~~(8)~~] "Public school" means the common schools of the commonwealth providing preschool, elementary, middle school, or secondary instruction.

(10)[~~(9)~~] "Qualified teaching service" is defined in KRS 164.769(2)(e).

(11)[~~(10)~~] "Semester" is defined in KRS 164.769(2)(f).

(12)[~~(11)~~] "Summer term" is defined in KRS 164.769(2)(g).

(13)[~~(12)~~] "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and shall not include substitute teaching

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.

(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.

(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher scholarship award shall be calculated by determining the student's total cost of education minus expected family contribution and the amount of financial aid received or expected to be received during the academic period. The amount of financial aid received or expected to be received during the academic period shall not include any amounts available from any student loan or work-study programs.

(2) The maximum teacher scholarship award for a student classified as a junior, senior, post baccalaureate, or graduate shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session).

(3) The maximum teacher scholarship award for a student classified as a freshman or sophomore shall be $325 for a summer session, $625 for a semester, and $1,250 for an academic year (exclusive of a summer session).

(4) The maximum award to an eligible student enrolled less than full time in the last semester or summer term during which a baccalaureate, post baccalaureate or master's degree will be completed shall be:

(a) $210 per credit hour if the student is enrolled during a regular semester; or

(b) $105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.

(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.

(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.

(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.

(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.

(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 11 of this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that he was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall contin-

ue until the recipient's obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to complete the eligible program of study, attain certification after completion of the eligible program of study, or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(3) In the event that a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's provision of teaching service, no refund of payments previously made shall be given to the recipient.

Section 7. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to any and all collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins either providing qualified teaching service in the Commonwealth of Kentucky or participating in KTIP shall be removed from default status.

Section 8 [~~7.~~] Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

(1) Conditional discharge. A conditional discharge shall be granted for maximum a two (2) year period, subject to annual review by the Authority, upon the submission of one (1) of the following as proof of the recipient's qualifying disability:

(a) A finding of permanent disability by the Social Security Administration; or

(b) A completed Teacher Scholarship Program Application for Discharge, which shall include a certification by the recipient's treating physician that the recipient is unable to work or earn money and that the condition is expected to persist indefinitely.

(2) Permanent discharge. At the expiration of the two (2) year Conditional Discharge period specified in subsection (1) of this section, the Authority shall grant a permanent discharge to a recipient under this program upon the submission by the recipient of current documentation verifying that the qualifying disability exists at the time the permanent discharge is granted.

Section 9 [~~8.~~] Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 10 [~~9.~~] Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11 [~~10.~~] Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 12 [~~11.~~] Refunds. (1) A student who fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his first day of class of the period of enrollment or changes enrollment status may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, all or a portion of the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution's refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Teacher scholarship;

(d) Kentucky Educational Excellence Scholarship;

(e) National Guard tuition assistance; and

(f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially

withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an over award and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student's last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;
2. The reason for the refund;
3. The date of enrollment status change;
4. The semester and year; and
5. The calculation used for determining the refund.

Section 13 [~~12.~~] Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 14 [~~13.~~] Incorporation by Reference. (1)"Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY SHROAT, Chair

APPROVED BY AGENCY: August 20, 2008

FILED WITH LRC: September 11, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2008 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(b) The necessity of this administrative regulation: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. This administrative regulation is necessary to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Teacher Scholarship Program by establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by explicitly defining default on a repayment obligation arising under this program. The amendment will also change this existing administrative regulation to specify that an award recipient who fails to complete an eligible program of study shall immediately become liable for repayment of the amounts received through the program. Further, this amendment will change the existing administrative regulation by establishing a formal default process, including provisions for transfer of non-paying accounts to another agency of the Commonwealth for additional collection activities, the assessment of collection costs in the event of default, and the method by which a previously defaulted obligation can be reinstated – namely, the provision of qualified teaching service as otherwise required under this program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to fully apprise recipients of the conditions under which they will become liable for repayment of scholarship awards under this program. Additionally, given that the term "default" is used in the promissory note/application for the Teacher Scholarship program, it is necessary to amend this regulation to formally define default under this program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by more fully setting forth the terms and conditions for this repayable scholarship, including defining default and establishing a procedure for collection of defaulted accounts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by accurately setting forth the terms of default, as well as the procedure of collecting on defaulted accounts under this repayable scholarship program.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: All current and prospective scholarship recipients under this program who enter repayment could be affected by this amendment in the event that they default on their repayment obligations. There are currently 208 recipients in repayment status under this program and an additional 206 recipients have defaulted on their repayment obligations hereunder.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: The amendment to this regulation does not require a particular action by the affected individuals for compliance purposes. Rather, the amendment sets forth the procedure that will be followed by the Authority in the event that recipients fail to honor their repayment obligations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to the affected individuals as a result of compliance as no compliance requirement is created through the amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: Same as 5(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Teacher Scholarship Awards are funded from net lottery revenues transferred to the Authority for grant and scholarship programs while administrative costs are borne by the Authority through receipts of the Authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(3), 164.769(5), (6)(f).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 8:040. Deferment of teacher scholarship repayment.

RELATES TO: KRS 164.740, 164.744(2), 164.769

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.769 authorizes the authority to specifically provide a program of teacher scholarships. KRS 164.748(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.7891. KRS 164.769(6)(f) requires the authority to promulgate administrative regulations establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships including deferments. This administrative regulation establishes conditions for deferment of the repayment obligation.

Section 1. Definitions. (1) "Authority" is defined by KRS 164 740(1).

(2) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date thereon.

(3) "Deferment" means a temporary waiver of the obligation of a teacher scholarship recipient to make payments to the authority, pursuant to one (1) or more promissory notes executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(4)[~~(3)~~] "Eligible institution" is defined in KRS 164.740(3).

(5)[~~(4)~~] "Kentucky Teacher Internship Program or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:

(a) Required by KRS 161.030 and established in 16 KAR 7:010; and

(b) Also referenced as the beginning teacher internship.

(6)[~~(5)~~] "Participating institution" is defined in KRS 164.769(2)(d).

(7)[~~(6)~~] "Professional Teaching Certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship;

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessment.

(8)[~~(7)~~] "Qualified teaching service" is defined in KRS 164.769(2)(e).

(9)[~~(8)~~] "Semester" is defined in KRS 164.769(2)(f).

(10)[~~(9)~~] "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and shall not include substitute teaching.

Section 2. Request for Deferment. (1) The recipient shall request a deferment in writing by submitting complete and accurate information on one (1) of the following forms, as appropriate:

(a) "Teacher Scholarship Program Request For School Enrollment Deferment";

(b) "Teacher Scholarship Program Request For Unemployment Deferment";

(c) "Teacher Scholarship Program Request For Disability Deferment";

(d) "Teacher Scholarship Program Request For Hardship Deferment"; or

(e) "Teacher Scholarship Program Request For Alternative Certification Deferment"; or

(f) "Teacher Scholarship Program Military Service Deferment Request".

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive the verification of facts represented by the recipient as may be deemed necessary by the authority.

Section 3. Effect on Repayments. (1) During a deferment, principal or interest repayments shall not be required. Interest shall:

(a) Continue to accrue on the unpaid principal balance owed by the recipient during a period specified in Section 4(1), (3), (4), or (5) of this administrative regulation; and

(b) Not accrue during a period specified in Section 4(2) of this administrative regulation.

(2) The authority shall not be required to grant a deferment if the deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) If, during a deferment, the recipient resumes full-time enrollment in a teacher education program at a participating institution or renders qualified teaching service, the deferment shall nullify the prior commencement of repayment, and a promissory note so deferred may be subsequently cancelled in accordance with 11 KAR 8.030.

Section 4. Types of Deferments. Except as provided in subsection (6) of this section, if the requirements established in this section are met, the authority shall grant an enrollment deferment, disability deferment, unemployment deferment, hardship deferment, military service deferment, alternative certification deferment, or qualified teaching service deferment.

(1) Enrollment deferment.

(a) An enrollment deferment shall be a deferment granted to a recipient who is enrolled on at least a half-time basis at an eligible institution in the United States.

(b) Each semester, the recipient shall provide to the authority evidence of the enrollment on the "Teacher Scholarship Program Request for School Enrollment Deferment" form.

(c) The Authority shall grant deferment of repayment upon this basis for a period not to exceed an aggregate of either:

1. Forty-eight (48) months for a recipient enrolled in a baccalaureate program; or

2. Sixty (60) months for a recipient enrolled in a graduate program.

(2) The authority shall grant deferment of repayment for periods not to exceed an aggregate of thirty-six (36) months for any one (1) or combination of the following circumstances, unless a documented extenuating circumstance is approved by the executive director of the authority:

(a) Disability deferment.

1. A disability deferment shall be a deferment granted to a recipient who is:

a. Temporarily totally disabled and, therefore, unable to obtain full-time employment or attend school; or

b. Unable to obtain full-time employment or attend school due to the temporary total disability of the recipient's spouse who:

(i) Requires continuous (twenty-four (24) hour) nursing or similar care by the recipient; and

(ii) Is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

2. For purposes of a disability deferment, a recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if the person suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude gainful employment or school attendance.

3. The recipient shall provide to the authority a statement from a licensed physician certifying that the recipient or spouse is temporarily totally disabled in accordance with subparagraphs 1 and 2 of this paragraph. The recipient shall be solely responsible for securing the physician's certification.

4. The authority shall grant a disability deferment subject to an annual review of the physician's certification.

5. After the third year of a disability deferment, the authority may cancel the debt if it appears that the disability is expected to continue for an indefinite time.

(b) Unemployment deferment. An unemployment deferment shall be granted to a recipient seeking, but unable to obtain, a qualified teaching service position within six (6) months following completion of a teacher education program at a participating institution. The recipient shall:

1. Be eligible to begin the Kentucky Teacher Internship Program established in KRS 161.030(5) and 16 KAR 7:010;

2. Have applied for a qualified teaching service position with at least three (3) public schools of the Commonwealth or private schools certified pursuant to KRS 156.160(3)[~~state-accredited school districts in Kentucky~~];

3. Not have refused an offer of employment in a qualified teaching service position in the Kentucky public or certified private schools[~~state-accredited school districts~~] to which the recipient may have applied; and

4. Provide the authority with a signed statement which sets forth:

a. The recipient's current address;

b. The names of the Kentucky public or certified private schools[~~state-accredited school districts~~] to which the recipient has applied for qualified teaching service employment; and

c. The recipient's agreement to notify the authority if the recipient obtains full-time employment in a qualified teaching service position.

(c) Hardship deferment. The authority shall determine that a hardship exists and grant a hardship deferment if:

1. Enrollment in a teacher education program or employment in a qualified teaching service position is temporarily interrupted due to circumstances beyond the recipient's control, including major illness, accident or death in the family, after which the recipient intends to resume the enrollment or qualified teaching position; or

2. The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Alternative certification deferment.

(a) A deferment shall be granted to a recipient who has received a provisional certification by the Kentucky Education Professional Standards Board (EPSB) under one (1) of the alternative routes to teacher certification established by the EPSB in 16 KAR Chapter 9.

(b) The deferment shall be granted for up to thirty-six (36) months in order to allow sufficient time for the recipient to complete the Kentucky Teacher Internship Program and to obtain professional teaching certification.

(5) Qualified teaching service deferment.

(a) A deferment shall be granted to a recipient who, due to current employment in a qualified teaching service position, may reasonably be expected, solely with the passage of six (6) months or less time, to qualify for cancellation benefits pursuant to 11 KAR 8.030.

(b) The authority shall grant a deferment of the obligation to repay the teacher scholarship during the period of time in which the recipient is making payments or performing qualified teaching service for another program if:

1. The recipient received loans or scholarships from more than one (1) program that:

a. Is administered by the authority; and

b. Required a period of qualified teaching service for repayment or cancellation; and

2. The recipient is either:

a. Obligated to concurrently make cash payments on the teacher scholarship and other program; or

b. Performing qualified teaching service to fulfill the other program's requirements.

(6) Upon default of a repayment obligation under this program, a recipient shall be barred from eligibility for any and all deferments provided for in this administrative regulation.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Teacher Scholarship Program Request For School Enrollment Deferment", March 2002;

(b) "Teacher Scholarship Program Request For Unemployment Deferment", March 2002;

(c) "Teacher Scholarship Program Request For Disability Deferment", March 2002;

(d) "Teacher Scholarship Program Request For Hardship Deferment", March 2002;

(e) "KHEAA Teacher Scholarship Program Request for Alternative Certification Deferment", November 2007; and

(f) "KHEAA Teacher Scholarship Program Military Service Deferment Request", November 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

JERRY SHROAT, Chair

APPROVED BY AGENCY: August 20, 2008

FILED WITH LRC: September 11, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2008 at 10 a m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes conditions for deferment of the repayment obligation established under 11 KAR 8.030 for teacher scholarship recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prescribe the conditions for deferment of the repayment obligation established under 11 KAR 8:030 for teacher scholarship recipients

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the authority to provide scholarship and KRS 164.769 authorizes the authority to specifically provide a program of teacher scholarships. KRS 164.784(4) and 164.753(3) require the authority to promulgate administrative regulations pertaining to the awarding of scholarships as provided in KRS 164.740 to 164.785 KRS 164.769(6)(f) requires the authority to establish, by administrative regulation, the terms and conditions for the award, cancellation, and repayment of teacher scholarships including but not limited to, deferments. This administrative regulation prescribes the requirements for receipt of a deferment of the repayment obligation under the Teacher Scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the Teacher Scholarship Program by prescribing conditions for deferment of the repayment obligation established under 11 KAR 8.030 for teacher scholarship recipients in order to assist those individuals in circumstances when repayment would be burdensome.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by setting forth the definition of "default" on the repayment obligation consistent with that established under 11 KAR 8.030. Additionally, the amendment will provide that, in order to qualify for an unemployment deferment for the repayment obligation under this program, a recipient must have applied for employment with Kentucky public or certified private schools. Finally, this amendment will add a new subsection that specifies that, in the event of default on a repayment obligation under this program, a recipient shall lose eligibility for deferments otherwise authorized by this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to incorporate the definition of "default" for the Teacher Scholarship program established in 11 KAR 8.030. Further, it is necessary to replace the current requirements for unemployment deferment with a clearer statement. Additionally, it is necessary to set forth, as a consequence of default, the loss of eligibility for deferments under this program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by expanding the definitions applicable to that program in order to be consistent with 11 KAR 8 030 and by establishing additional requirements for eligibility for deferments and loss thereof under this program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by further enhancing the deferment provisions under this program as required by the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed change could affect all scholarship recipients who seek deferment of their repayment obligation in that, if they default thereon, they will no longer have eligibility for such deferments.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Those recipients who seek a deferment of their repayment obligation under this program will be required to insure that they do not default hereunder as defined in Section 1 of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those recipients who avoid defaulting on their repayment obligations and who are otherwise eligible will receive the requested deferments.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Teacher Scholarship Awards are funded from net lottery revenues transferred to the Authority for grant and scholarship programs while administrative costs are borne by the Authority through receipts of the Authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(3), 164.769(5), (6)(f).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments.

RELATES TO: KRS 164.7891

STATUTORY AUTHORITY: KRS 164.748(4), 164.7891(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Disbursement" means the date the school indicates on the disbursement roster that funds were either credited to the student's account or disbursed to the student in accordance with 11 KAR 14:030, Section 2.

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date thereon.

(4) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.

(5)[~~(4)~~] "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.

(6)[~~(5)~~] "Qualified service" is defined in KRS 164.7891(3)(c).

Section 2. (1) The scholarship recipient shall immediately become liable for repayment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, if the scholarship recipient:

(a) Ceases enrollment at the school of osteopathic medicine prior to completion of the program of study;

(b) Begins, but fails to complete, an internship leading to licensure to provide qualified service;

(c)1. Fails to begin a residency in a qualified field immediately following completion of the program of study at the school of osteopathic medicine or immediately following completion of an intervening internship; or

2. Begins, but fails to complete, a residency in a qualified field;

(d) Fails to obtain a license to practice osteopathic medicine in the Commonwealth, or

(e) Otherwise fails to perform qualified service in full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year after obtaining a license to practice osteopathic medicine.

(2) If the authority has reason to believe that an event specified in subsection (1) of this section has occurred, the authority shall send to the scholarship recipient's last known address written notification of demand for payment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, that shall be effective upon mailing.

(3) The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. If more than one (1) promissory note has come due for repayment and remains unpaid, payments shall first be applied to the earliest unpaid promissory note. Payments shall be applied first to accrued interest and then to principal.

Section 3. If the scholarship recipient obligated for repayment remits a partial payment, the payment shall first be applied to accrued interest and then to unpaid principal on the earliest unpaid promissory note and on each unpaid promissory note in the order in which the promissory notes were executed.

Section 4. (1) The interest rate applicable to repayment of a promissory note under this program shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

(2) In the event that a repayment obligation subsequently becomes eligible for service credit cancellation as a result of the recipient's completion of an eligible program of study and provision of qualified service through full-time practice in the Commonwealth as a licensed doctor of osteopathy, no refund of payments previously

made shall be given to the recipient.

Section 5. Default. (1) Upon default on a repayment obligation under this program, the recipient's account shall be transferred to the appropriate agency of the Commonwealth of Kentucky for collections and shall be subject to any and all collection charges and fees assessed by that agency.

(2) A recipient whose repayment obligation has defaulted and who subsequently begins providing qualified service in the Commonwealth of Kentucky as specified above shall be removed from default status.

JERRY SHROAT, Chair

APPROVED BY AGENCY: August 20, 2008

FILED WITH LRC: September 11, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2008 at 10:00 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the Osteopathic Medicine Scholarship Program by establishing uniform procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by adding the definition of the term "default" with regard to a repayment obligation imposed under this program. Additionally, the amendment will provide that any payments made by a recipient during a repayment period shall be non-refundable in the event the recipient subsequently provides qualified service thereby obtaining forgiveness of the remaining repayment obligation. Further, this amendment will change the existing administrative regulation by establishing a formal default process, including provisions for transfer of non-paying accounts to another agency of the Commonwealth for additional collection activities, the assessment of collection costs in the event of default, and the method by which a previously defaulted obligation can be reinstated – namely, the provision of qualified service as otherwise required under this program.

(b) The necessity of the amendment to this administrative regulation: Given that the term "default" is used in the promissory note/application for the Osteopathic Medicine Scholarship program, it is necessary to amend the regulation to provide a uniform definition for that term as used in the administration of the Osteopathic Medicine Scholarship program. Additionally, this amendment is necessary to inform those recipients who have entered repayment that, in the event they subsequently attain eligibility for cancellation of their repayment obligations, any payments previously made will not be refunded. Further, this amendment is necessary to establish a formal default process, including provisions for transfer of non-paying accounts to another agency of the Commonwealth for additional collection activities, the assessment of collection costs in the event of default, and the method by which a previously defaulted obligation can be reinstated – namely, the provision of qualified medical service as otherwise required under this program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes in that KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by accurately setting forth the terms of default as well as the procedure of collecting on defaulted accounts under this repayable scholarship program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and prospective scholarship recipients under this program who enter repayment could be affected by this amendment in the event that they default on their repayment obligations. There are currently 42 recipients in repayment status under this program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: The amendment to this regulation does not require a particular action by the affected individuals for compliance purposes. Rather, the amendment sets forth the procedure that will be followed by the Authority in the event that recipients fail to honor their repayment obligations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to the affected individuals as a result of compliance as no compliance requirement is created through the amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Osteopathic Medicine Scholarship Program is provided by a percentage of the coal severance tax appropriated by the General Assembly for that purpose.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendments to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation neither establish any fees nor directly nor indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the

amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.746(6), 164.748(4), 164.7891(9).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 14:080. Deferment of Osteopathic Medicine Scholarship Program repayment.

RELATES TO: KRS 164.740, 164.7891
STATUTORY AUTHORITY: KRS 164.7891(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes conditions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Deferment" means a temporary waiver of the obligation of an osteopathic medicine scholarship recipient to make payments to the authority pursuant to one (1) or more promissory notes, executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date thereon

(4) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.

(5)[~~(4)~~] "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.

(6)[~~(5)~~] "Qualified service" is defined in KRS 164 7891(3)(c).

Section 2. Request for Deferment. (1) The osteopathic medicine scholarship recipient shall request a deferment in writing by submitting to the authority complete and accurate information verifying the recipient's circumstances that qualify for deferment in accordance with this administrative regulation.

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive from a third-party verification of facts represented by the recipient.

Section 3. Effect on Repayment. (1) During a deferment:

(a) A principal or interest repayment shall not be required, and

(b) Interest shall continue to accrue on the unpaid principal balance owed by the recipient during the period specified in Section 4(4) of this administrative regulation.

(2) The authority shall not grant a deferment if a deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) A promissory note for which repayment is deferred in accordance with this administrative regulation shall subsequently be cancelled in accordance with KRS 164.7891(5) if the osteopathic medicine scholarship recipient resumes full-time enrollment in an accredited program of study at a school of osteopathic medicine located in the Commonwealth or renders qualified service.

Section 4. Types of Deferments. Except as provided in subsection (5) of this section, the authority shall grant deferment of repayment for a period of twelve (12) months, not to exceed an aggregate of thirty-six (36) months, excluding military service deferment or an internship and residency deferment, for the circumstances described in this section:

(1) Disability deferment.

(a) A deferment may be granted to an osteopathic medicine scholarship recipient who is:

1. Temporarily totally disabled and, therefore, unable to attend school or perform qualified service; or

2. Unable to attend school or perform qualified service due to the temporary, total disability of the osteopathic medicine scholarship recipient's spouse who requires continuous (twenty-four (24) hour) nursing or similar care by the recipient.

(b) For purposes of this deferment, an osteopathic medicine scholarship recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if he suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude school attendance or employment and, in case of a recipient's spouse, he is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

(c) The recipient shall provide to the authority a statement from a licensed physician (other than the osteopathic medicine scholarship recipient) certifying that the recipient or spouse is temporarily totally disabled in accordance with the requirements established in paragraph (b) of this subsection. The recipient shall be solely responsible for securing the physician's certification and ensuring that it is received by the authority.

(d) If the deferment is granted for a period of less than one (1) year at a time, the deferment shall be subject to periodic review of a physician's certification every six (6) months.

(e) After the third year of a recipient's deferment, pursuant to this subsection, the authority shall cancel the debt if it reasonably appears to the authority based on the certification of a licensed physician other than the scholarship recipient that the scholarship

recipient is totally disabled and the disability is expected to be permanent and continue to preclude the scholarship recipient's school attendance and employment for an indefinite time.

(2) Hardship deferment. The authority shall determine that a hardship exists and grant a hardship deferment if:

(a) Enrollment in an accredited program at a school of osteopathic medicine located in the Commonwealth or performance of qualified service is temporarily interrupted due to circumstances beyond the recipient's control, including natural disaster or death in the family, after which the recipient intends to resume the enrollment or qualified service position; or

(b) The recipient is insolvent due to circumstances beyond his control, including natural disaster, involuntary unemployment, or unforeseen medical expenses.

(c) This deferment shall.

1. Be granted for a period of less than one (1) year; and

2. Be subject to periodic review of documentation every six (6) months.

(3) Military service deferment. The authority shall grant a military service deferment to a recipient upon proof of current active duty status in the United States Armed Forces, subject to annual review and verification by the authority.

(4) Internship and residency deferment.

(a)1. An osteopathic medicine scholarship recipient shall receive a deferment during the normal term of service in a single American Osteopathic Association approved rotating internship in osteopathic medicine prior to beginning practice in osteopathic medicine.

2. An osteopathic medicine scholarship recipient shall receive a deferment during the normal term of service in:

a. A single American Osteopathic Association approved residency program in a qualified field, or

b. the Family Practice plus One year Neuromuscular Medicine (FP+1) residency program.

(b) The recipient shall submit to the authority verification that he is enrolled in the internship or residency program, the start date, and anticipated end date of the internship or residency from the hospital, clinic, or other institution where the internship or residency is being performed.

(c) This verification shall contain the following information:

1. The recipient's name, Social Security number, current home address, and telephone number;

2. The name and address of the hospital, clinic, or other institution where the internship or residency is being performed;

3. The name, title, address, telephone number, and signature on a statement of certification or verification of the person supervising the recipient's internship or residency program; and

4. The expected date that the internship or residency program will be completed.

(d) A recipient whose period of obligated service has been deferred under this subsection shall begin full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year in a qualified field immediately following the completion of the initial residency period and licensure to practice osteopathic medicine in the Commonwealth of Kentucky.

(5) Upon default of a repayment obligation under this program, a recipient shall be barred from eligibility for any and all deferments provided for in this administrative regulation

JERRY SHROAT, Chair

APPROVED BY AGENCY: August 20, 2008

FILED WITH LRC: September 11, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2008 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conditions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish conditions for deferment of the repayment obligation established under the Osteopathic Medicine Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7891 requires the authority to promulgate administrative regulations for the administration of the Osteopathic Medicine Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the Osteopathic Medicine Scholarship Program by establishing the conditions for deferment of the repayment obligation established under the Osteopathic Medicine Scholarship Program

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by setting forth the definition of "default" on the repayment obligation consistent with that established under 11 KAR 14:060. Additionally, this amendment will add a new subsection that specifies that, in the event of default on a repayment obligation under this program, a recipient shall lose eligibility for deferments otherwise authorized by this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to further establish provisions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship as required under KRS 164.748(4), 164.753(3) and 164.7891(9).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 164.7891 requires the authority to promulgate administrative regulations for the administration of the Osteopathic Medicine Scholarship Program including the establishment of criteria for deferment of the repayment obligation under the program. The amendment to this administrative regulation will further establish deferment provisions for the program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing an additional provision regarding eligibility for deferment of the repayment obligation under the Osteopathic Medicine Scholarship as provided for in KRS 164.748(4), 164.753(3) and 164.7891(9).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and prospective scholarship recipients under this program who enter repayment could be affected by this amendment in the event that they default on their repayment obligations. There are currently 42 recipients in repayment status under this program.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified

in question (3) will have to take in order to comply with this administrative regulation or amendment: Those recipients who seek to have repayment of their scholarship indebtedness deferred will be required not to default on the repayment obligation in order to maintain eligibility for deferments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the affected individuals avoid default on their repayment obligations and otherwise satisfy the requirements for deferment, a deferment will be granted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Osteopathic Medicine Scholarship Program is provided by a percentage of the coal severance tax appropriated by the General Assembly for that purpose.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7891(9).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No additional costs will be incurred as a result of this amendment.

d. How much will it cost to administer this program for subsequent years? No additional costs will be incurred as a result of this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) Program.

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164 7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund to administer the funds appropriated to the trust fund for the program. KRS 164.7874(14) requires the Authority to determine the KEES curriculum's courses of study. KRS 164.7879(3)(c) requires the Authority to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(3) requires the Authority to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires the Authority to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the Authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the Authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the Authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" means a cooperative educational endeavor between secondary schools and colleges and universities administered by the College Board of the Educational Testing Service and recognized by KDE.

(5) "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where a student is currently enrolled.

(6) "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(7) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that a student is attending.

(8) "GED" means a general educational development diploma awarded to a student.

(9) "International baccalaureate course" means a course in a secondary education program sponsored by the International Baccalaureate Organization and recognized by the KDE in 704 KAR 3 340, Section 2(3)(b).

(10) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156 010.

(11) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each grade awarded for all courses taken during an academic year.

(2)(a) Except as provided in paragraph (b) of this subsection, an eligible high school student's grade point average shall be calculated by

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned shall be calculated using a 5.0 point scale where 5 0 is an "A" and 1.0 is an "F".

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164 7885(1) be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1 and 2 and shall submit the "Home of Record Certification" to the Authority.

(b) The Authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and

2. Requesting that the local school submit the information to the Authority using the "Curriculum Certification" Form and the "Data Submission" Form.

(b) The Authority, upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, shall

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited high school, and

3. Retain the "Curriculum Certification" on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school,

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section,

(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the courses and electives required by this subsection.

(a) For a student enrolled in high school who is required to meet the curriculum standards in 704 KAR 3:305, Section 2, five (5) of the seven (7) electives required by 704 KAR 3:305, Section 2 shall be taken in the areas and according to the standards established in paragraph (b) of this subsection.

(b) The following subject areas and standards shall be applicable for electives. An elective in:

1. Social studies, science, mathematics, English/language arts, or arts and humanities shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.

2. Physical education or health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.

3. Foreign languages shall be a course whose academic content includes teaching the spoken and written aspects of the language.

4. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(14) shall be eligible to earn a KEES award for that year upon.

(a) Completion of no fewer than three (3) courses of study; and

(b) Satisfying the provisions of KRS 164.7879.

(4) A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:

(a) The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4.060, and the document "Academic Expectations"; or

(b) The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.

(5) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.

(3) Pursuant to KRS 164 7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) For students that graduated from high school not later than the 2004-2005 academic year, engineering provided, however, that enrollment in the engineering program shall be continuous (14.0101, 14201, 14.0301, 14401, 14501, 14 0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14 1801, 14.1901, 14 2101, 14.2301, 14 2401, 14.2801, 14 9999.01, 14.3501).

(4) Pursuant to KRS 164 7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) semesters of a KEES award,

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or

3. A program contained on the Equivalent Undergraduate Programs List; and

(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used:

Table C-2
Concordance Between SAT I Recentered V+M Score and ACT Composite Score

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores.
The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.
Source. ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
January 1998

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The date of the student's graduation is May 1999 or thereafter;

(c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and

(d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The student's 18th birthday occurs on or after January 1, 1999;

(c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;

(d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

(a) The parents meet the provisions of KRS 164.7879(2)(c)1 and 2;

(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) An eligible student who receives a GED diploma within five (5) years of attaining eighteen (18) years of age shall be eligible for a supplemental award if:

(a) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164 7879(3); and

(b) The student enrolls in a participating institution within five (5) years of receiving the GED diploma.

(5) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(6)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2.045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9 Administrative Responsibilities and Expenses of

Program. (1) The Authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The Authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The Authority shall develop an allotment schedule for the release of the administrative funds.

Section 10 Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Home of Record Certification", June 2005;

(b) "Curriculum Certification", June 2005;

(c) "Data Submission", June 2005; and

(d) "Equivalent Undergraduate Programs List ", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JERRY SHROAT, Chair

APPROVED BY AGENCY: August 20, 2008

FILED WITH LRC: September 11, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2008 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program and to transfer the administrative responsibility of the program from the Council on Postsecondary Education (CPE) to the Kentucky Higher Education Assistance Authority (KHEAA).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS 164.7874(3) requires KHEAA to establish a table to convert an SAT score to an ACT standard; KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard; KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program; KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and 164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study. This administrative regulation established these requirements related to the KEES program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing program eligibility criteria for administration of the KEES program by KHEAA.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by clarifying that, for the 5-year undergraduate engineering program at the University of Kentucky, a recipient must be continuously enrolled in said program in order to be eligible for a fifth year KEES award.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to further specify the conditions under which a scholarship recipient is eligible for a fifth year KEES award.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to develop regulations for administration of the KEES program. This amendment further enhances the regulation pertaining to eligibility for a fifth year KEES award.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by further defining the program eligibility criteria for the KEES program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 800 postsecondary students who currently receive KEES awards who may pursue an engineering program of study, and any unknown number of future postsecondary students that may choose to pursue an engineering program of study at the University of Kentucky could potentially be affected by this amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: In order to be eligible for a fifth year KEES award under this program, recipients pursuing a 5-year undergraduate program in engineering at the University of Kentucky must maintain continuous enrollment in that program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipient in complying with this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continuous enrollment in the specified program of study will entitle otherwise eligible KEES recipients to receive a fifth year KEES award.

(5) Provide an estimate of how much it will cost to implement this administrative regulation.

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement the change in this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and conse-

quently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3); 164.7879(1), (2), (3); 164.7881(4)(a), (c), (6).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 18:010. Robert C. Byrd Honors Scholarship Program.

RELATES TO: KRS 164.744(2), 164.748(7), (8), 34 C.F.R. 654.1-654.5, 654.30-654 52, 20 U S C. 1070d-31-1070d-41

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 34 C.F.R. 654.30, 654 41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. 1070d-35 and 1070d-37, and 34 C.F.R. 654.30 and 654.41 require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program in Kentucky.

Section 1. Definitions. (1) "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date.

(2) "Authority" is defined in KRS 164.740(1).

(3) "Award year" means the period of time from July 1 of one (1) year through June 30 of the following year.

(4) "Eligible student" is defined in KRS 164.740(5).

(5) "Federal act" is defined in KRS 164.740(7).

(6) "High school" means a school located within or outside of the commonwealth enrolling students for secondary school instruction that is:

(a) Operated by a state; or

(b) A private, parochial, or church secondary school that has been recognized as accredited, or voluntarily complying with accreditation standards, by one (1) of the fifty (50) state departments of education or one (1) of the seven (7) independent regional accrediting associations.

(7) "High school graduate" means an individual who receives:

(a) A high school diploma;

(b) A General Education Development (GED) Certificate; or

(c) Any other evidence recognized by the commonwealth as the equivalent of a high school diploma.

(8) "Participating institution" is defined in KRS 164.740(13).

(9) "SAT score" means the sum of the scores achieved on the critical reading and mathematics components of the Scholastic Aptitude Test at a national test site on a single national test date.

(10) "Scholar" means an individual who is selected as a Byrd Scholar.

(11) "Secretary" is defined in KRS 164.740(19).

Section 2. Eligibility Criteria. (1) Initial eligibility. To be eligible for selection as a scholar, an individual shall meet the initial eligibility criteria established in 34 C.F.R. 654.40.

(2) Continued eligibility. To remain eligible for additional awards under this program for subsequent award years, a scholar shall meet the continued eligibility criteria established in 34 C.F.R. 654.51.

Section 3. Initial Application Procedures. (1) In order for an eligible student to be considered for an award under this program:

(a) The eligible student shall not have applied for consideration in a prior year; and

(b) The requirements of either subsection (2) or (3) of this section shall be met.

(2) High school students.

(a) The eligible student's participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15 on the Robert C. Byrd Honors Scholarship Program Application set forth in 11 KAR 4:080, Section 1(5)(a).

(b) The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

1. A certified transcript showing the cumulative grade point average as of the most recent semester completed prior to the high school guidance counselor's certification;

2. An official ACT score or SAT score;

3. A high school guidance counselor's recommendation, not exceeding 150 words, pertaining to the student's promise of continued academic achievement; and

4. A listing of honors, activities, and community service performed during high school.

(3) GED recipients.

(a) A GED coordinator shall nominate the eligible student, and submit to the authority a completed application by June 30 on the Robert C. Byrd Honors Scholarship Program Application for GED Recipients form set forth in 11 KAR 4:080, Section 1(5)(b).

(b) The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

1. An official General Education Development score certification; and

2. The GED coordinator's recommendation, not exceeding 150 words, pertaining to the student's promise of continued academic achievement.

Section 4. Nomination Procedures. Each participating high school shall select and submit applications as follows:

(1) Number of nominations per school. A participating high school shall submit nominations according to the following guidelines:

(a) High schools with enrollments of 1,500 or more may nominate a maximum of five (5) applicants;

(b) High schools with enrollments of 1,000-1,499 may nominate a maximum of four (4) applicants;

(c) High schools with enrollments of 500-999 may nominate a maximum of three (3) applicants; and

(d) High schools with enrollments of less than 500 may nominate a maximum of two (2) applicants.

(2) A participating high school shall nominate only eligible students who:

(a) Have a minimum:

1. ACT score of twenty-three (23); or

2. SAT score of 1060; and

(b) Have a minimum 3 5 cumulative grade point average as certified by the high school guidance counselor.

(3) A GED coordinator shall nominate only eligible students who have a minimum GED score of 2700.

Section 5. Selection Procedures. (1) Applications shall be reviewed to ensure compliance with the requirements set forth in Sections 2, 3, and 4 of this administrative regulation.

(2) The authority shall sort acceptable applications according to the six (6) congressional districts in order to ensure proportional distribution.

(3) The authority shall evaluate and score applications on a scientific basis by a stratified random technique, with consideration to demonstrated outstanding academic achievement and promise of continued achievement and reasonable geographic representation throughout the state.

(4) At least one (1) scholar shall be selected among the GED recipients. GED recipients shall be chosen with consideration to demonstrated outstanding academic achievement and promise of continued achievement as indicated both by the GED examination scores as well as the GED coordinator's recommendation.

(5) A scholar shall be selected from eligible applicants without regard to:

(a) The applicant's race, color, national origin, sex, religion, disability, economic background, educational expenses, or financial need;

(b) Whether the scholar attended a high school located within or outside of the commonwealth; or

(c) Whether the participating institution that the scholar plans to attend is public or private or is within or outside the commonwealth.

(6) A selected scholar shall agree in writing that he shall repay to the authority the total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term as determined by the participating institution or the authority.

Section 6. Notification Procedures. The authority shall notify eligible students, tentatively selected as scholars, in writing of their status not later than ninety (90) days after the application submission deadline.

Section 7. Award Amount. (1) The amount of the annual award shall be governed by 34 C.F.R. 654.50 and 34 C.F.R. 654.51(b).

(2) A scholar shall receive an aggregate maximum of $6,000 over four (4) years for an undergraduate or an equivalent undergraduate program of study if he or she maintains eligibility.

Section 8. Disbursements. (1) The first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount awarded pursuant to this administrative regulation, does not exceed the eligible student's total cost of attendance.

(2) The award shall be paid in at least two (2) disbursements in the amount of:

(a) One-half (1/2) in the fall term; and

(b) One-half (1/2) in the spring term.

(3) The funds shall be disbursed by the authority to the educational institution for either subsequent delivery to the scholar or application of the funds to the account of the scholar.

(4)(a) Except as provided in paragraph (b) of this subsection, the award shall be utilized within twelve (12) months of the time of initial award.

(b) The authority's executive director may authorize a postponement of the award utilization.

1. The postponement shall be for up to twelve (12) additional months from the date the scholar:

a. Otherwise would have enrolled in the institution after the scholarship award was made; or

b. Interrupts enrollment.

2. A postponement shall be granted only if:

a. There is sufficient good cause; and

b. The scholar requests in writing, before the payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment.

(c) A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (b) of this subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution.

(d) The authority may extend the twelve (12) month suspension period without terminating the scholar's eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the twelve (12) month suspension is due to exceptional circumstances beyond the scholar's control or necessary for the scholar to meet a commitment.

JERRY SHROAT, Chair

APPROVED BY AGENCY: August 20, 2008

FILED WITH LRC: September 11, 2008 at 2 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 21, 2008 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program.

(b) The necessity of this administrative regulation: Title IV, Part A, Subpart 6 of the federal act, as amended, 20 U.S.C. 1070d-31 *et seq.*, establishes the Robert C. Byrd Honors Scholarship Program and requires the Secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. sections 1070d-35 and 1070d-37, and 34 C.F.R. sections 654.30 and 654.41, require the authority, as the state agency designated to receive the grant to establish criteria and application procedures for the selection of eligible scholars for the Robert C. Byrd Honors Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Title IV, Part A, Subpart 6 of the federal act, as amended, 20 U.S.C. 1070d-31 *et seq*, establishes the

Robert C. Byrd Honors Scholarship Program and requires the Secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S C. sections 1070d-35 and 1070d-37, and 34 C.F.R. sections 654.30 and 654.41, require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the Robert C. Byrd Honors Scholarship Program by establishing criteria and application procedures for the selection of eligible scholars.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by providing that GED scholarship applicants shall be evaluated on the basis of academic achievement and the promise of continued academic achievement as indicated by their GED examination scores and GED coordinator evaluations.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to provide the same evaluation requirements for GED applicants as those already established for high school graduates, thus making selection of scholarship recipients consistent.

(c) How the amendment conforms to the content of the authorizing statutes: The federal authorizing statute requires the state entity responsible for administering the Byrd Scholarship program to establish application procedures and selection criteria for the program by administrative regulation. The amendment to this regulation incorporates the GED applicant selection criteria specified in that authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by insuring that GED applicants are selected for awards under this program in a manner similar to that utilized for high school graduate applicants and consistent with the federal statutory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: GED recipients who apply for Byrd Scholarship awards will be affected by this amendment in that their applications will now be evaluated based on their level of achievement and likelihood of continued academic success, rather than simply on the basis of GED examination scores.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: The amendment to this regulation does not require a particular action by the affected individuals for compliance purposes. Rather, the amendment sets forth the criteria that will be utilized by the Authority in evaluating applications and making awards to GED recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to the affected individuals as a result of compliance as no compliance requirement is created through the amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. The Robert C. Byrd Honors Scholarship Program is federally funded through an annual appropriation by Congress.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary as a result of the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(3), 20 U.S.C. 1070d-37, 1070d-38, 34 C.F.R. 654.30, 654 41.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal statutes and regulations that constitute the federal mandate are 20 U.S.C. sections 1070d-31 through 1070d-41 and 34 C.F.R. Part 654, subparts A, D, E, and F.

2. State compliance standards. These federal statutes and regulations establish the criteria for initial and continued eligibility of students, and establish the amount of the scholarship award. The federal criteria for eligibility and award amount are adopted by the Authority without change. The federal statutes and regulations also require the Authority to establish criteria and application procedures for the selection of eligible scholars in the Robert C. Byrd Honors Scholarship Program. Discretion is given to the Authority to establish procedures and requirements in the following areas: Initial Application, Nomination, Selection, Notification and Disbursement. In order for an eligible student to be considered for an initial award under this program, the eligible student shall not have ap-

plied for consideration in a prior year. For high school seniors, the eligible student's participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15. The application shall be accompanied by a certified transcript showing the cumulative grade point average for seven semesters of high school, an official ACT score or SAT score, a high school guidance counselor's recommendation, not exceeding 150 words, pertaining to the student's promise of continued academic achievement and a listing of honors, activities, and community service performed during high school. For a GED recipient, a GED coordinator shall nominate the eligible student, and submit to the authority a completed application by February 15. The application shall be accompanied by an official General Education Development score certification and the GED coordinator's recommendation, not exceeding 150 words, pertaining to the student's promise of continued academic achievement. For nomination purposes, participating high schools with enrollments of 1,500 or more may nominate a maximum of five applicants. High schools with enrollments of 1,000-1,499 may nominate a maximum of four applicants. High schools with enrollments of 500-999 may nominate a maximum of three applicants and high schools with enrollments of less than 500 may nominate a maximum of two applicants. A participating high school shall nominate only students who have a minimum ACT score of 23, or SAT score of 1060 and a minimum 3.5 grade point average for seven semesters of high school. For GED graduates, a GED coordinator shall nominate only eligible students who have a minimum GED score of 2700. For selection purposes, the authority shall require review of applications to ensure compliance with the requirements set forth above, sort acceptable applications according to the six congressional districts in order to ensure proportional distribution, evaluate and score applications on a scientific basis by a stratified random technique, with consideration to demonstrated outstanding academic achievement and promise of continued achievement and reasonable geographic representation throughout the state. At least one scholar shall be selected on this basis among the GED recipients. A scholar shall be selected from eligible applicants without regard to the applicant's race, color, national origin, sex, religion, disability, economic background, educational expenses, or financial need, or whether the scholar attended a high school located within or outside of the Commonwealth or whether the participating institution that the scholar plans to attend is public or private or is within or outside the Commonwealth. A selected scholar shall agree in writing that he shall repay to the authority the total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term as determined by the participating institution or the authority. For notification, the authority shall notify eligible students, tentatively selected as scholars, of their status within 90 days after the application submission deadline. For disbursement the first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount awarded pursuant to this administrative regulation, does not exceed the eligible student's total cost of attendance. The award shall be paid in two disbursements in the amount of one-half in the fall term and one-half in the spring term. The funds shall be disbursed directly to the school for subsequent delivery to the scholar or application to the account of the scholar. The award shall be utilized within twelve (12) months of the time of initial award, except that the authority executive director may authorize for sufficient cause a postponement of the utilization of the award for up to twelve (12) additional months, beginning on the date the scholar otherwise would have enrolled in the institution after the scholarship award or the date the scholar interrupts enrollment, if the scholar requests in writing, before the fall payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment. A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (a) of this subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or re-enrollment at a participating institution. The authority may extend the twelve (12) month suspension period without terminating the scholar's eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the twelve (12) month suspension is due to exceptional circumstances beyond the scholar's control or necessary for the scholar to meet a commitment.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes and regulations impose specific requirements on administration of the Byrd Program with respect to eligibility and award amount. Specifically, they provide that a student is eligible to be selected as a scholar if he or she is a legal resident of the State to which he or she is applying for a scholarship, is a U.S. citizen or national, provides evidence from the U.S. Immigration and Naturalization Service that he or she is a permanent resident of the United States, is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, is a permanent resident of the Trust Territory of the Pacific Islands (Palau), becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application, has applied or been accepted for enrollment as a full-time student at an institution of higher education, is not ineligible to receive assistance as a result of default on a Federal student loan or other obligation, as provided under 34 C.F.R. 75.60 and files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 C.F.R. 668.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending. For award amount, the state education agency shall disburse $1,500 for each year of study for a maximum of four years of study to each scholar who is selected in accordance with the criteria established under Sec. 654.41 and meets the requirements for continuing eligibility under Sec. 654 51. The state education agency shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance, that loans are reduced prior to reducing a scholarship awarded under this program and that the selection process is completed, and the awards made, prior to the end of each secondary school academic year. The Authority without change adopts the federal criteria for eligibility and award amount. The federal statutes and regulations require the State Education Agency (SEA) to establish procedures for the following areas: Initial Application, Nomination, Selection, Notification and Disbursement. The federal statutes and regulations allow discretion to establish those criteria and procedures so long as they ensure that the SEA selects scholars:

(a) Who are eligible students under the criteria provided in 34 C.F.R. Sec. 654.40;

(b) Who have demonstrated outstanding academic achievement and show promise of continued achievement;

(c) In a manner that ensures an equitable geographic distribution of awards within the State; and

(d) Without regard to:

(i) Whether the secondary school each scholar attends is within or outside the scholar's State of legal residence;

(ii) Whether the institution of higher education each scholar plans to attend is public or private or is within or outside the scholar's State of legal residence,

(iii) Race, color, national origin, sex, religion, disability, or economic background; and

(iv) The scholar's educational expenses or financial need. The federal statutes and regulations also require that the procedures established by the state educational agency ensure that the agency shall.

(a) Notify scholars of their selections and scholarship awards;

(b) Disburse the scholarship funds in accordance with 34 C.F.R Sec. 654.50 to the scholar, the institution of higher education in which the scholar enrolls, or co payable to the scholar and the institution of higher education in which the scholar enrolls;

(c) Complete the selection process and make the awards prior to the end of each secondary school academic year;

(d) Collect any scholarship funds improperly disbursed under Sec. 654.50,

(e) Permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the

scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter requirements than those in the federal statute and regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate for the selection of eligible scholars.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:130. Hazardous duty coverage.

RELATES TO: KRS 61.592, 78.530, 78.545(31)
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.592, 78.530, and 78.545(31) [~~The~~] statute allows employers and agencies participating in the Kentucky Employees Retirement System and the County Employees Retirement System[~~Systems~~] to request hazardous position coverage for employees. This administrative regulation sets out the procedures and forms for requesting hazardous position coverage.

Section 1. If a county eligible to participate in the County Employees Retirement System chooses to provide hazardous duty coverage to all eligible employees, the county shall adopt an appropriate order to pay the required contributions and provide hazardous coverage to all eligible employees. Notwithstanding the three (3) month trial period set out in Section 2 of 105 KAR 1:120, the county's request for participation in CERS shall be submitted to the Board of Trustees at the first quarterly meeting which occurs at least one (1) month after the adoption of the appropriate order. The effective date of hazardous position coverage in the order shall be the date of the county's participation in County Employees Retirement System.

Section 2. (1) A [~~county participating in the County Employees Retirement System or a~~] department participating in the Kentucky Employees Retirement System may provide hazardous position coverage upon authorization by the governing authority. The governing authority shall make the request for hazardous position coverage in writing to the board of Trustees of Kentucky Retirement Systems. If the position is approved, the[~~. The~~] effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees which occurs after the date of the request.

(2) A county participating in the County Employees Retirement System may provide hazardous position coverage upon adoption of a resolution by its governing authority to transfer eligible positions from nonhazardous to hazardous position coverage. The governing authority shall make the request for hazardous position coverage in writing to the Board of Trustees of Kentucky Retirement Systems. If the position is approved, the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees of Kentucky Retirement Systems in which the hazardous position coverage is approved.

(a) Employees working in hazardous covered positions in the County Employees Retirement System that were approved for hazardous coverage prior to September 1, 2008, shall continue to participate as hazardous covered employees as long as they remain in a position that had been approved for hazardous coverage prior September 1, 2008.

(b) Employees who begin participating in the County Employees Retirement System on or after September 1, 2008, in a position that was approved for hazardous coverage prior to September 1, 2008, shall not be reported as hazardous covered employees until the county requests that the Board of Trustees of Kentucky Retirement Systems approve hazardous coverage for those positions that meet the criteria as set out in KRS 61.592(1)(b) and hazardous coverage is approved by the Board of Trustees of Kentucky Retirement Systems for those positions, even if the position has previously been approved for hazardous coverage.

Section 3. (1) The [~~county or~~] department shall complete and submit the Form 7013, HP-1, Hazardous Participation Certification (KERS)[~~dated July 1991, incorporated by reference~~]. The form shall be signed by the head of the county or department and by an individual who can attest that sufficient funds have been budgeted for the employer contributions. For departments of the Commonwealth of Kentucky, the department shall also submit a letter from the Governor's Office of Policy and Management verifying sufficient funds have been budgeted for employer contributions.

(2) The county shall complete and submit the Form 7011, HP-1, Hazardous Participation Certification (CERS). The form shall be signed by the head of the county and by an individual who can attest that sufficient funds have been budgeted for the employer contributions.

Section 4. The [~~county or~~] department shall submit a Form 7025, Position Questionnaire and a description of the duties of each position for which hazardous coverage is requested. The county shall submit a Form 7025, Position Questionnaire, for employees whose participation date was prior to September 1, 2008 or a Form 7026, Position Questionnaire, for employees whose participation date was prior to September 1, 2008 or a Form 7026, Position Questionnaire, for employees whose participation date was on or after September 1, 2008, and a description of the duties of each position for which hazardous coverage is requested.

Section 5. The county or department shall complete and submit a Form 2011, HP-2, Hazardous Position Certification[~~dated July 1991~~] provided by the retirement system for each employee in a position for which the coverage has been requested. If there is any change in the employee's work assignment or classification, the agency shall submit a new Form 2011, HP-2, Hazardous Position Certification, indicating the change in the position.

Section 6. If the county elects, pursuant to KRS 78.530(3)(a), (d) or (f), to pay the cost of providing hazardous coverage for current employees for past service in positions approved for hazardous coverage, the county shall request and pay for an actuarial study to determine the cost.

Section 7. Incorporation by Reference (1) The following material is incorporated by reference:

(a) Form 2011, HP-2, Hazardous Position Certification, August 2008;

(b) Form 7011, HP-1, Hazardous Participation Certification (CERS), August 2008;

(c) Form 7013, HP-1, Hazardous Participation Certification (KERS), August 2008;

(d) Form 7025, Position Questionnaire, August 2008; and

(e) Form 7026, Position Questionnaire, August 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [~~The forms required by this administrative regulation are incorporated by reference and are available from~~] Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky Monday through Friday, [~~between the hours of~~] 8 a.m. and 4:30 p.m. [~~Monday through Friday.~~]

RANDY OVERSTREET, Chair
APPROVED BY AGENCY: August 21, 2008
FILED WITH LRC: September 5, 2008 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this

agency in writing by October 16, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for requesting hazardous duty coverage for eligible employees of a participating agency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures for requesting hazardous duty coverage for eligible employees of a participating agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.592 provides for hazardous duty coverage for employees who meet the definition of hazardous duty and whose agency has petitioned the board and received approval for hazardous duty retirement coverage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the procedures for an agency to request hazardous duty retirement coverage for its eligible employees.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides procedures to be followed for employees who begin participating in the County Employees Retirement System after September 1, 2008, and whose agency wishes to classify the position as hazardous duty for retirement purposes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to confirm with statutory changes effective September 1, 2008.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute KRS 61.592 provides for hazardous duty coverage for employees who meet the definition of hazardous duty and whose agency has petitioned and received approval from the board for hazardous duty retirement coverage.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing the procedures for an agency to request hazardous duty retirement coverage for its eligible employees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individual or entity affected by this administrative regulation is the agency that will be seeking hazardous duty retirement coverage and the employees who will be working in those positions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the procedures to request hazardous duty coverage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employees will receive a higher retirement benefit and employees and agencies will have to pay a higher contribution rate for hazardous duty retirement coverage.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in funding or fees required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All agencies participating in one of the retirement systems administered by Kentucky Retirement Systems that have employees in hazardous covered positions

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.592, 78.530, 78.545(31)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenues generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenues generated.

(c) How much will it cost to administer this program for the first year? There will be no change in cost for participating agencies.

(d) How much will it cost to administer this program for subsequent years? There will be no change in cost for participating agencies.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:140. Contribution reporting.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 26 U.S.C. 401(a)(17), 26 U.S.C. 401(a)(17)(B), 26 U.S.C.

401(a)(31), 26 U.S.C. 403(b), 26 U.S C. 408(a), (b), 26 U S C. 414 (g)(6), 26 U S C. 457(b).

STATUTORY AUTHORITY: KRS 61.560, 61.645(9)(f), 61.675, 61.685, 78 545(24), 78.610, 78.615

NECESSITY, FUNCTION, AND CONFORMITY: Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required to report creditable compensation and contributions to the retirement systems and other information that the Board of Trustees may require. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall report the creditable compensation and contributions of its employees at least once per month on the Form 3, Summary of Wages Earned, or by diskette or tape in the electronic format "KRSPAY" or other electronic format acceptable to the retirement system. Each employer who reports on diskette or tape may report on a semimonthly basis. Each employer shall report only the creditable compensation earned during the period for which the report is prepared and shall report only the employee and employer contributions on the basis of this creditable compensation.

(2) Creditable compensation for a lump-sum bonus, severance pay, or an employer-provided payment for purchase of service credit shall be made in accordance with the provisions of KRS 16.505(8), 61.510(13), or 78.510(13). Total service shall include all service credit earned as of the date of the report or purchase.

(3)(a) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S C. 401(a)(17), $150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(b) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U S C. 414(g)(6) shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(c) Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds $200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B) may not be taken into account in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(d) A participating member whose creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002, and who has filed a notification of retirement may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if the excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 2. If creditable compensation in excess of actual compensation is reported, the employer shall request a refund of the excess employer and employee contributions. The retirement system shall remit the excess employer and employee contributions to the employer in the form of checks made payable to the employer. The employer shall distribute the employee's contributions to the employee if the amount is due the employee after making payroll deductions in accordance with federal and state law.

Section 3. If creditable compensation is reported that is less than actual creditable compensation paid to the employee by the employer, the employer shall report the deficiency by pay period to the retirement system along with the employer and employee contributions owed as a result of the deficiency. The employer may report the additional creditable compensation by letter or other form which shall include:

(1) The Social Security number, name and gross creditable compensation of the employee by pay period.

(2) The total employer and employee contributions required on the additional creditable compensation and the computation of both amounts.

(3) The signature of the individual authorized by the agency to report contributions to the retirement system.

Section 4. If an expense allowance is paid to a county official by the state, the state shall withhold the employee contributions applicable to the amount and remit it to the retirement system on behalf of the county. The county shall report the employer contributions on the Form 3-E, Expense Allowances Quarterly Report.

Section 5. An employer may change the name or address of an employee by submitting a letter or personnel document effecting the change signed by a personnel or payroll official.

Section 6. Each employer shall provide to the retirement system, upon request and in the form prescribed by the retirement system, information relating to all employee wages, employment status or other employment related information. Upon request, each employer shall make all relevant records related to its employees available to the retirement system during regular working hours.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 3, Summary of Wages Earned, June 1991", Kentucky Retirement Systems; and

(b) "Form 3-E, Expense Allowances Quarterly Report, July 1991", Kentucky Retirement Systems

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. at the Kentucky Retirement Systems,

Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation provides the procedures and methods for employers participating in CERS, KERS, and SPRS to report employer and employee contributions to Kentucky Retirement Systems and the effect of the maximum annual compensation limit in 26 U.S.C. 401(a)(17) on the amount of contributions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and methods for contribution reporting by employers participating in CERS, KERS, and SPRS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Employers are required to report employee and employer contributions by KRS 16.543, 16.545, 16.645(4), 61.543, 61.560, 61.565, 61.675, 78.545(24), 78.545(34), 78.610, 78.615, and 78.625. This administrative regulation establishes the guidelines, procedures, and methods for employers participating in CERS, KERS, and SPRS to report employer and employee contributions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidelines, procedures and methods for contribution reporting by employers participating in CERS, KERS, and SPRS.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds language regarding contribution reporting limits required for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add language regarding contribution reporting limits required for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adding language regarding contribution reporting limits that is required for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(d) How the amendment will assist in the effective administration of the statutes: Participating agencies will be aware of the procedures regarding reporting contributions and the limitations established by federal law.

(3) List the type and number of individuals, businesses, organizations, or state
and local governments affected by this administrative regulation: All agencies participating in one of the systems administered by Kentucky Retirement Systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The participating agencies will have to comply with reporting contribution limits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to employers participating in KERS, CERS, and SPRS as they are already required by statute to report employer and employee contributions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members and participating employers are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Agencies participating in one of the systems administered by Kentucky Retirement Systems.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.560, 61.645(9)(g), 61.675, 61.685, 78.545(24), 78.610, 78.615, 26 U.S.C. 401(a)(17), 401(a)(17)(B), 414 (g)(6), 401(a)(31), 408(a), (b), 403(b), 457(b).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no substantive effect on administrative expenditures and no effect on revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for Kentucky Retirement Systems or its participating agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for Kentucky Retirement Systems or its participating agencies.

(c) How much will it cost to administer this program for the first year? There will be little to no additional administrative costs for Kentucky Retirement Systems or its participating agencies because the participating agencies are already required to report contributions.

(d) How much will it cost to administer this program for subsequent years? Minimal additional administrative costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. 401(a)(17), 401(a)(17)(B), 414 (g)(6), 401(a)(31), 26 U S.C. 408(a), (b), 403(b), 457(b).
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes require compliance with the requirements for plan documents (state statutes and administrative regulations).
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:380. Minimum distribution.

RELATES TO: KRS 61.645(9)(g), 26 C.F.R. 1.401(a)(9)-0-1.401(a)(9)-9, 26 U.S.C. 401(a)(9)
STATUTORY AUTHORITY: KRS 61 645(9)(g)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(9)(g) and this administrative regulation implement the statutory requirements of IRC Section 401(a)(9), which is codified as 26 U S.C. 401(a)(9), and are meant to be a reasonable good faith interpretation of those statutory requirements. This administrative regulation establishes minimum distribution requirements in compliance with 26 U.S.C. 401(a)(9).

Section 1. Definitions. (1)[~~"Life expectancy" means life expectancy as computed by use of the Single Life Table in 26 C.F.R. 1.401(a)(9)-9.~~

~~(2)~~] "Member" means a member of a retirement fund established in accordance with KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, and administered by the Kentucky Retirement Systems.

(2)[~~(3)~~] "Required beginning date" means April 1 of the calendar year following the later of:
(a) The calendar year in which the member attains age seventy and one-half (70 1/2); or
(b) The calendar year in which the member retires.

Section 2. (1) This administrative regulation shall[~~:~~
~~(a) Apply for purposes of determining required minimum distributions;~~
~~(b) Comply with the requirements of 26 U.S.C. 401(a)(9), and~~
~~(c)~~] Apply to members of a fund established in accordance with KRS 61.515 to 61.705, 16.510 to 16.652, and 78 520 to 78.852.

(2) Kentucky Retirement Systems shall pay all benefits in accordance with a good faith interpretation of the requirements of 26 U.S.C. 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of 26 U S.C. 414(d). The requirements of 26 U.S C. 401(a)(9) shall take precedence over any inconsistent provisions of KRS 61.515 to 61.705, 16.510 to 16 652, and 78 520 to 78 852.

(3) The member's entire interest shall be distributed over the member's life or lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary [~~All distributions required pursuant to this administrative regulation shall be determined and made in accordance with treasury regulations established in 26 C.F.R. 1.401(a)(9)-0-1.401(a)(9)-9~~]

Section 3. (1) Except as provided in subsection (2) of this section, the member's entire interest shall be distributed, or begin to be distributed, to the member no later than the member's required beginning date.

(2) If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, no later than as follows:

(a) Except as provided in paragraph (d) of this subsection, if the member's surviving spouse is the member's sole designated beneficiary, distributions to the surviving spouse shall begin by the later of:
1. December 31 of the calendar year immediately following the calendar year in which the member died; or
2. December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2);

(b) If the member's surviving spouse is not the member's sole designated beneficiary, distributions to each designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died;

(c) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death; or

(3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest shall be distributed at least as rapidly as under the method of distribution before the member's death.[~~(d) the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, paragraphs (b) and (c) of this subsection shall apply as if the surviving spouse were the member and paragraph (a) of this subsection shall not apply.~~]

(4)[~~(3)~~](a) For purposes of subsections 2 through 6[~~subsection (2)(a) through (c) of this section and Section 5~~] of this administrative regulation, distributions shall be required[~~considered~~] to begin on the member's required beginning date.

(b)[~~If subsection (2)(d) of this section applies, distributions shall be considered to begin on the date distributions shall be required to begin to the surviving spouse pursuant to subsection (2)(a) of this section.~~

~~(c)~~] If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse pursuant to subsection (2)(a) of this section, the date distributions are considered to begin shall be the date distributions actually commence.

Section 4. (1) If the member's interest is paid in the form of annuity distributions, payments pursuant to the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in monthly periodic payments[~~made at intervals not longer than one (1) year~~];

(b) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in this section or Section 4 or 5 of this administrative regulation;

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted; and

(d) Payments shall increase only as follows:
1. By the annual percentage increase provided for pursuant to KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78 852;
2. To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in this section dies, or if the beneficiary is the member's spouse and they divorce, as provided in KRS 61.635(10),
3. To provide cash refunds of employee contributions upon the member's death; or
4. To pay any increased benefits that result from a plan amendment.

(2)(a) The amount that shall be distributed on or before the

member's required beginning date, or if the member dies before distributions begin, the date distributions are required to begin pursuant to Section 3(2) of this administrative regulation, shall be the payment that is required for one (1) month.

(b) The second payment shall not be required to be made until the end of the next payment interval even if that payment interval ends in the next calendar year.

(c) All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for months ending on or after the member's required beginning date.

Section 5. (1) The amount of annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of 26 U.S.C. 401(a)(9)(G), and the minimum distribution incidental benefit rule under 26 C.F.R. 1.401(a)(9)-6, Q&A-2.

(2) The death and disability benefits provided by Kentucky Retirement Systems are limited by the incidental benefit rule set forth in 26 U.S.C. 401(a)(9)(g) and 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five (25) percent of the cost of all of the members' benefits received from Kentucky Retirement Systems [~~(a) If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death shall not exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in Q&A-2 of 26 C.F.R. 1.401(a)(9)-6.~~

~~(b) If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in paragraph (a) of this subsection shall apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.~~]

(3)[~~(2)~~](a) Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime shall not exceed the applicable distribution period for the member pursuant to the uniform lifetime table established in 26 C.F.R. 1.401(a)(9)-9 for the calendar year that contains the annuity starting date.

(b) If the annuity starting date precedes the year in which the member reaches age seventy (70), the applicable distribution period for the member shall be the distribution period for age seventy (70) under the uniform lifetime table established in 26 C.F.R. 1.401(a)(9)-9 plus the excess of seventy (70) over the age of the member as of the member's birthday in the year that contains the annuity starting date.

(4)[~~(c)~~] If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain shall not exceed the longer of the member's applicable distribution period, as determined pursuant to this subsection, or the joint life and last survivor expectancy of the member and the member's spouse as determined pursuant to the joint and last survivor table established in 26 C.F.R. 1.401(a)(9)-9, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

Section 6. (1) If the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the entire interest payable to the member shall be distributed, beginning no later than the time established in Section 3(2)(a) or (b) of this administrative regulation, over the life of the designated beneficiary or over a period certain not exceeding:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2)[~~If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.~~

~~(3)~~] If the member dies before the date distribution of the member's interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section shall apply as if the surviving spouse were the member, except that the time by which distributions are required to begin shall be determined without regard to Section 3(2)(a) of this administrative regulation.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for compliance with the minimum distribution requirements of 26 U.S.C. 401(a)(9).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and qualifications for compliance with the minimum distribution requirements of 26 U.S.C. 401(a)(9).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Retirement Systems to maintain its status as a public defined benefit plan under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide procedures for determining the required minimum distributions to be made in accordance with 26 U.S.C. 401(a)(9).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds language regarding minimum distribution requirements necessary to maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add language regarding minimum distribution requirements that are necessary for maintaining the tax qualified status of the plans administered by Ken-

tucky Retirement Systems.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by adding language regarding minimum distribution requirements that is required for maintaining the tax qualified status of the plans administered by Kentucky Retirement Systems.

(d) How the amendment will assist in the effective administration of the statutes: Members will be aware of the minimum distribution requirements.

(3) List the type and number of individuals, businesses, organizations, or state
and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems who are required to take minimum distributions of their accounts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The members and participating employers will be required to submit a completed certification form and the employers will be required to submit reports regarding employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to members.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis. There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 C.F.R. 1.401(a)(9)-0-1.401(a)(9)-9 and 26 U.S.C. 401(a)(9)

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

KENTUCKY RETIREMENT SYSTEMS
Finance and Administration Cabinet
Kentucky Retirement Systems
(Amendment)

105 KAR 1:390. Employment after retirement.

RELATES TO: KRS 16 505(15), 61.510, 61.637, 78.510(3), (18), 26 U.S C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. This administrative regulation concerns the administration of KRS 61.637 in conjunction[~~conjuction~~] with federal law regarding bona fide separation from service and changes in employment relationship if a member returns to employment with a Kentucky Retirement Systems participating employer after retirement[~~, whether in a Kentucky Retirement Systems Covered position or a noncovered position~~]. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statues and regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax-qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions. (1) "Initial retirement date" means the member's effective retirement date as defined in KRS 61.590(5)

(2) "Reemployed" for purposes of this administrative regulation and KRS 61 637 does not include a transfer to another position with the same employer.

(3) "Participating employer" means an employer that participates in one of the systems administered by Kentucky Retirement Systems.

Section 2. (1) Returning to work in a participating position. A retired member who is reemployed in a participating position shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and the member's employer without a prearranged

agreement at the time of member's retirement between the member and any participating employer to return to work for any participating employer in any capacity including an agreement to return as a leased employee.

(3) "Break in service" as provided in this section requires:

(a) A member who retired from a hazardous position shall have a one (1) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(b) A member who retired from a nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a hazardous participating position.

(c) A member who retired from a hazardous or a nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer in a non-hazardous participating position.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with any participating employer, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

Section 3. (1) Returning to work for a participating employer in a non-participating position. A retired member who is employed by a participating employer in a non-participating position shall have:

(a) A bona fide separation from service as provided subsection (2) of this section, and

(b) A break in service as provided in subsection (3) of this section.

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and the member's last employer without a prearranged agreement between the member's last employer and the member at the time of retirement to return to work for the member's last employer in any capacity after the member's retirement including an agreement to return as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System are treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), will be treated as a separate employer.

(3) "Break in service" as provided in this section requires:

(a) A member who retired from a hazardous position and becomes employed in a nonparticipating hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed in a nonparticipating hazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a hazardous or nonhazardous position and becomes employed in a nonparticipating nonhazardous position shall have a three (3) calendar month break in service before returning to work with a participating employer.

Section 4. (1) Returning to work with the same employer in a position required to participate in a different retirement system. A retired member who is reemployed in a position required to participate in a different retirement system than that from which the retired member is receiving a monthly retirement allowance shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section

(2) "Bona fide separation from service" as provided in this section means a cessation of the employment relationship between the member and a participating employer without a prearranged agreement to return to work between the same employer and the member in any capacity at the time of the member's retirement, including an agreement to return as a leased employee.

(a) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System are treated as the same participating employer.

(b) For purposes of this section, County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), will be treated as a separate employer.

(3) "Break in service" as provided in this section requires:

(a) A member who retired from a hazardous position and becomes employed by the same employer in a hazardous position required to participate in different retirement system than the system from which the retired member is receiving a monthly retirement allowance, shall have a one (1) calendar month break in service before returning to work with a participating employer.

(b) A member who retired from a nonhazardous position and becomes employed by the same employer in a participating hazardous position in a different retirement system than the system from which the retired member is receiving a monthly retirement allowance, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(c) A member who retired from a nonhazardous or hazardous position and becomes employed by the same employer in a participating non-hazardous or hazardous position in a different retirement system than the system from which the retired member is receiving his monthly retirement allowance, shall have a three (3) calendar month break in service before returning to work with a participating employer.

(4) If the member does not have a bona fide separation from service and a break in service and returns to work with the same employer in a position required to participate in a different retirement system than the system from which the retired member is receiving a monthly retirement allowance, the retired member's retirement shall be voided. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.

Section 5. (1) Returning to work for a different participating employer in a non-participating position. A retired member who becomes employed in a non-participating position shall not be required to have a bona fide separation from service if the retired member becomes employed with a different participating employer than the retired member's employer prior to retirement.

(2) A retired member who becomes employed in a non-participating position shall have a three (3) calendar month break in service.

(3) For purposes of this section, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System are treated as the same participating employer.

(4) For purposes of this section, for County Employees Retirement System agencies, each county, as defined by KRS 78.510(3), will be treated as a separate employer.

Section 6. (1) Requirements before employment after retirement. The retired member and the reemploying employer shall certify that at the time of the retired member's retirement there was no prearranged agreement to employ the retired member after the retired member's retirement. The retired member and reemploying employer shall complete and file at the retirement office the Form 6751, Retired Member and Employer Certification Regarding Reemployment.

(2) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with any participating employer. [~~Bona fide separation from service" means a cessation of the employment relationship between the member and the member's employer without a prearranged agreement between the participating employer and the member upon retirement to return to work for the participating employer after retirement in any capacity, including an agreement to return as a leased employee.~~

~~(2) "Covered Position" means a position required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.~~

~~(3) "Noncovered Position" means a position not required to participate in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.~~

~~(4) "Normal retirement age" means:~~

~~(a) Age sixty-five (65) for a nonhazardous member, in accordance with KRS 61.510(18), and 78.510(18); or~~

~~(b) Age fifty-five (55) for a hazardous member as defined in KRS 16.505(15).~~

~~Section 2. Requirements for Commencing a Retirement Benefit. (1)(a) For purposes of commencing a retirement benefit, a member shall terminate employment with the participating employer and shall have a bona fide separation from service, except as provided in Section 9 of this administrative regulation.~~

~~(b) A prearranged agreement to be reemployed as a leased employee or as an independent shall be evaluated by the Kentucky Retirement Systems to determine if there is a continuing employment relationship.~~

~~(2)(a) In order to show compliance with this administrative regulation, the retiring member and the member's last employer shall certify upon application for a retirement benefit that a prearranged agreement to reemploy the retiring member has not been made.~~

~~(b) The member and the member's last employer shall complete and file at the retirement office the Form 6751, Member and Employer Certification Regarding Reemployment.~~

~~(c) The retired member shall report in writing to Kentucky Retirement Systems future employment in any capacity with the same employer from which the member retired or with an employer that participates in the retirement system from which the member retired.~~

~~(d) The retirement office shall not process a monthly retirement allowance until the member has filed the Form 6751, Member and Employer Certification Regarding Reemployment, at the retirement office.~~

~~Section 3. The Same Employer for Purposes of KERS and SPRS. For purposes of applying KRS 61.637, all participating employers in the Kentucky Employees Retirement System and the State Police Retirement System shall be treated as the same participating employer.~~

~~Section 4. The Same Employer for Purposes of CERS. For purposes of applying KRS 61.637, each county, as defined by KRS 78.510(3), shall be treated as a separate employer.~~

~~Section 5. Returning to work with the same participating employer. (1) Returning to work in a covered position in the same retirement system without a break in service or a bona fide separation from service.~~

~~(a) If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, except as provided in Section 9 of this administrative regulation, and returns to work with the same participating employer, in a covered position in the same retirement system, the member's retirement shall be voided.~~

~~(b) The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.~~

~~(2) Returning to work in a covered position in a different retirement system.~~

~~(a)1. If the member does not have a bona fide separation from service, except as provided in Section 9 of this administrative regulation, and returns to work with the same participating employer in a covered position in a different retirement system, the member's retirement shall be voided.~~

~~2. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.~~

~~(b)1. If a member does have a bona fide separation from service (unless a bona fide separation from service is not required by Section 9 of this administrative regulation) and returns to work with the same participating employer in a covered position in a different retirement system and if the member does not have a one (1) calendar month break in service, the member's benefit shall be suspended for the first month of the member's reemployment.~~

~~2. The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the month.~~

~~(3)(a) Returning to work in a noncovered position. If the member does not have a one (1) calendar month break in service or does not have a bona fide separation from service, and returns to work with the same participating employer, in a noncovered position in any of the systems administered by Kentucky Retirement System, the member's retirement benefit shall be suspended for the duration of the employment.~~

~~(b) If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.~~

~~(4)(a) Returning to work with the same principal duties. If the member has a one (1) calendar month break in service and if there was a bona fide separation from service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with the same principal duties, the member's retirement benefit shall be suspended for a period beginning on the first of the month of the reemployment and ending on the first of the month following six (6) months from the member's first employment termination date, unless the member had reached normal retirement age at the time of employment termination.~~

~~(b) If the member received any retirement allowances, dependent child payments, or health plan premiums in error during the period of suspension, the member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems during the period of suspension.~~

~~(5) Returning to work with different principal duties. If the member has a one (1) calendar month break in service and if there was a Bona Fide Separation from Service, and the member returns to work with the same participating employer in a position, whether covered or noncovered, with different principal duties, the member's retirement benefit shall continue unaffected.~~

~~Section 6. Returning to Work for a Different Participating Employer. (1) bona fide separation from service not required.~~

~~(a) If the member returns to work in any position, whether covered or noncovered, with a different participating employer than the member's last employer prior to retirement, a bona fide separation from service shall not be required.~~

~~(b) The requirement that there be at least a one (1) month break in service shall be applicable as established in subsection (5) of this section and in KRS 61.637.~~

~~(2) Returning to work in the same retirement system with a break in service. If the member has a one (1) calendar month break in service, and the member returns to work with a different participating employer in the same retirement system from which the member retired, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.~~

~~(3)(a) Returning to work in a covered position in the same retirement system without a break in service. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in a covered position in the same retirement system from which the member retired, the member's retirement shall be voided.~~

~~(b) The member shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the Kentucky Retirement Systems.~~

~~(4) Returning to work in a noncovered position in the same retirement system without a break in service. If a member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in the same retirement system in a noncovered position the member's retirement benefit shall continue unaffected.~~

~~(5) Returning to work in a different retirement system. If the member does not have a one (1) calendar month break in service, and returns to work with a different participating employer in a different retirement system, in any position, whether covered or noncovered, the member's retirement benefit shall continue unaffected.]~~

Section 7. Status as an Employee. (1) A retired member and a Kentucky Retirement Systems participating employer shall file written notice at the retirement office if the retired member has accepted employment with the participating employer under a personal services contract.

(2) If Kentucky Retirement Systems determines that the retired member is an employee of the participating employer, rather than an independent contractor, the retired member shall be subject to Sections 1 through 5[~~and 6~~] of this administrative regulation.

(3) Kentucky Retirement Systems shall take appropriate action to determine the individual's status as an independent contractor or employee.

Section 8. Leased Employees. (1) A retired member and a participating employer shall file at the retirement office written notice if the retired member is performing work for the participating employer through a private leasing company, a temporary staffing agency, or any other company.

(2) If the retirement system determines that the retired member is an employee of the participating employer, rather than the private leasing company, temporary staffing agency, or other company, the retired member shall be subject to the provisions of Sections 1 through 5[~~and 6~~] of this administrative regulation.

Section 9. [~~A Member who has Reached the Member's Normal Retirement Age. (1) For purposes of administering the provisions of KRS 61.637, a bona fide separation from service shall not be required if a member has attained normal retirement age at the time of termination of employment.~~

~~(2) The requirement that there be at least a one (1) month break in service shall be applicable as set forth in this administrative regulation and in KRS 61.637.~~

~~Section 10.~~] Incorporation by Reference. (1) "Member and Employer Certification Regarding Reemployment", Form 6751, August[~~November 2007~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4.30 p.m.

RANDY OVERSTREET, CHAIR APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOSD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for returning to employment after retirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer establish the procedures and qualifications for compliance with KRS 61.637, 26 U.S.C. 401(a) and 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the provisions for employment after retirement in accordance with KRS 61.637 and 26 U.S.C. 401(a)(9) 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment complies with amendments made to KRS 61.637 in HB 1 enacted by the 2008 Special Session of the GA.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation. This amendment is necessary to comply with amendments made to KRS 61.637 in HB 1 enacted by the 2008 Special Session of the GA.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to amendments made to KRS 61.637 in HB 1 enacted by the 2008 Special Session of the GA by changing the requirements for becoming employed after retirement and changing the form to be filed by employers and retired members.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by allowing Kentucky Retirement Systems to administer amendments made to KRS 61.637 in HB 1 enacted by the 2008 Special Session of the GA by changing the requirements for becoming employed after retirement and changing the form to be filed by employers and retired members.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems who become reemployed after their effective retirement date and the participating employers who employee them.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The members and participating employers will be required to submit a completed certification form and the employers will be required to submit reports regarding employees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ordinary administrative costs. Members and participating employers are already required to submit completed forms and reports to Kentucky Retirement Systems.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members and participating employers are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Retirement Systems and its participating agencies.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.637, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no substantive effect on administrative expenditures and no effect on revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for Kentucky Retirement Systems or its participating agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for Kentucky Retirement Systems or its participating agencies.

(c) How much will it cost to administer this program for the first year? There will be little to no additional administrative costs for Kentucky Retirement Systems or its participating agencies because the Kentucky Retirement Systems already administers KRS 61.637 and the agencies already file reports with Kentucky Retirement Systems.

(d) How much will it cost to administer this program for subsequent years? Minimal additional administrative costs.

Note. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Administrative Regulation)

105 KAR 1:420. 401(h) account established under 26 U.S.C. 401(h).

RELATES TO: KRS 61.701, 61.702, 61.645(9)(g)

STATUTORY AUTHORITY: KRS 61.701, 61.702, 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16 510 to 16.652, and 78 520 to 78.852. Pursuant to the provisions of KRS 61.702(b)(5), as amended by HB 1 of the 2008 Special Session and of KRS 61.645, there is hereby established effective September 1, 2008, a separate 401(h) account established under 26 U.S.C. 401(h) within each of the following: the Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Retirement Trust Fund.

Section 1. Definitions. To be "retired" for purposes of eligibility to receive medical benefits described in 26 U.S.C. 401(h), an employee must be eligible to receive benefits under the Systems. For purposes of this section, an employee is not considered to be eligible to receive these benefits if he or she is still employed by his/her employer. A separation from employment is a condition to receiving these benefits.

(2) "Dependent" shall have the same meaning as that assigned to it by Internal Revenue Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B).

(3) "Medical expense" means expense for medical care as defined in Internal Revenue Code Section 213(e)(1).

Section 2. The purpose of the 401(h) account established under 26 U.S.C. 401(h) in each of the systems is to pay part of the subsidy for health benefits that are otherwise payable from the health insurance fund.

Section 3. The one (1) percent mandatory contribution established by HB 1 shall be deposited in the separate account of each system trust fund, respectively.

Section 4. The 401(h) accounts established under 26 U.S.C. 401(h) shall be used solely to pay medical expenses to retired employees, their spouses, and dependents.

Section 5. The health benefits are subordinate to the retirement benefits provided by the systems. (No life insurance protection is provided by any system.) This requirement will not be satisfied unless the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the systems (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the 401(h) accounts established under 26 U.S.C 401(h).

Section 6. Amounts in the 401(h) accounts established under 26 U.S.C. 401(h) are for the exclusive purpose of paying medical expenses for retirees, their spouses, and dependents. Amounts in the 401(h) accounts established under 26 U.S.C. shall not be diverted for other purposes.

Section 7. Any amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall revert to the employers upon satisfaction of all liabilities for medical benefits

Section 8. Employees do not have an individual interest in the 401(h) accounts established under 26 U.S.C. 401(h).

Section 9. The 401(h) accounts established under 26 U.S.C. 401(h) may be commingled with the pension assets of the trust funds for investment purposes. Investment earnings shall be credited to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

Section 10. Administrative and other expenses shall be charged to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact. J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation established a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the one (1) percent mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the one (1) percent mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statues by establishing a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the one (1) percent mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a 401(h) account under 26 U.S.C. Section 401(h) for receipt of the one (1) percent mandatory employee contribution to be made by members of all of the systems administered by Kentucky Retirement Systems who are hired after September 1, 2008.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None. Members hired on or after September 1, 2008 are required by statute to make the one (1) percent contribution. This administrative regulation establishes the account to hold the one (1) percent contributions separately from the member's accounts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Administrative Regulation)

105 KAR 1:430. General Compliance with Federal Tax Laws

RELATES TO: KRS 16.505 - 16.652, 61.510 - 61.705, 78.510 - 78.852, 26 U.S.C 401(a)(7),(8), (25) 26 U.S.C. 414(d),(p),(u), 26 U.S.C. 503(b)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: Kentucky Retirement Systems will administer the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System as qualified defined benefit plans pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code, regulations and such other Internal Revenue Code Sections as applicable. This administrative regulation sets out certain provisions necessary to comply with applicable federal law.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and 401(a)(8) for Vesting and Forfeitures. A plan member shall be 100% vested in the member's accumulated contributions at all times. In confor-

mity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) will be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. Effective December 12, 1994, notwithstanding any other provision of the retirement system law; contributions, benefits, and service credit with respect to qualified military service are governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. Effective as of July 1, 1989, the board may not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Retirement Systems will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by rule; such benefits will not be subject to employer discretion.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH AGENCY: September 2, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, KY 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Retirement Systems' compliance with 26 U.S.C Section 401(a)(7), (8), (25); 26 U.S.C. Section 414(d), (p), (u); 26 U.S.C. Section 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky Retirement Systems' compliance with 26 U.S.C 401(a)(7), (8), (25); 26 U.S.C. 414(d), (p), (u); 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes because it establishes Kentucky Retirement Systems' compliance with 26 U.S C 401(a)(7), (8), (25); 414(d), (p), (u); 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing Kentucky Retirement Systems' compliance with 26 U.S.C 401(a)(7), (8), (25); 414(d), (p), (u); 503(b) in order for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C Section 401(a)(7), (8), (25); 414(d),(p),(u); 503(b).

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)

201 KAR 2:105. Licensing and drug distribution requirements for wholesale distributors[~~drug manufacturers and wholesalers~~].

RELATES TO: KRS 315.010, 315.402, 315 406[~~315 036, 21 C.F.R. 205.1-205.7~~]

STATUTORY AUTHORITY: KRS 315.010, [~~315 036,~~] 315.191(1), 315.402, 315 406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.402 and 315.406[~~315.036~~] authorizes the board to promulgate administrative regulations to regulate wholesale distributors[~~the manufacturers and wholesalers~~] of drugs. [~~It also authorizes the board to require by administrative regulation, the maintenance of accurate records of all drugs manufactured, received and sold.~~] This administrative regulation establishes the requirements for the regulation of wholesale distributors[~~manufacturers and wholesalers~~].

Section 1. Definition "Drug sample" means unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug [~~Definitions. (1) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.~~

~~(2) "Blood component" means that part of blood separated by physical or mechanical means.~~

~~(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.~~

~~(4) "Manufacturer" is defined by KRS 315.010(12).~~

~~(5) "Prescription drug" is defined by KRS 315.010(21).~~

~~(6) "Wholesale drug distribution" means the distribution of legend drugs to persons other than consumers or patients and excludes a common carrier or individual retained solely to transport prescription drugs and the lawful distribution of prescription drug samples by manufacturers or their representatives, but shall not include the sale, purchase, or trade of a legend drug, or offer of same.~~

~~(a) By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;~~

~~(b) By hospitals or other health care entities under common control;~~

~~(c) To alleviate emergency medical necessity or temporary shortage between pharmacies;~~

~~(d) By a pharmacist dispensing pursuant to a valid prescription order;~~

~~(e) By intracompany sales; or~~

~~(f) By blood banks.~~

~~(7) "Wholesaler" is defined by KRS 315.010(26).~~]

Section 2. Requirements. (1) A wholesale distributor engaged in wholesale distribution in the Commonwealth[~~wholesaler or distributor~~] shall apply for a license[~~permit~~] from the board in accordance with KRS 315 402, 315.406,[~~315 036~~] and this administrative regulation.

(2) A separate license[~~permit~~] shall be required for each wholesale distributor's facility that distributes within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a licensee[~~permit holder~~] shall not be required to obtain a license[~~permit~~] under this section when the agent or employee is acting in the usual course of business or employment.

(4) A license[~~permit~~] shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;

(b) Physical separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled merchandise until they are destroyed or returned;

(c) Providing accurate and precise records of all goods shipped or received including source or recipient, date, quantity, itemized description, and any other information pertinent to the transaction; and

(d) Providing proof of registration with the state controlled substance authority, and with the U.S. Drug Enforcement Administration and shall comply with all DEA regulations. [~~(5) The Kentucky Board of Pharmacy may choose to adopt administrative regulations to include out-of-state distributors or may reciprocally accept in lieu thereof licensure valid by a comparable authority equally recognizing Kentucky's requirements.~~]

Section 3. Qualifications for License[~~Permit~~]. (1) The minimum qualifications shall include:

(a) The Kentucky Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the Commonwealth:

1. Any convictions of the applicant under any federal, state, or local laws relating to drug samples and[,] wholesale or retail drug distribution of controlled substances;

2. Any felony convictions of the applicant under federal, state, or local laws;

3. The applicant's past experience in the wholesale [~~manufacture or~~] distribution of prescription drugs, including controlled substances;

4. The furnishing by the applicant of false or fraudulent material in any application made in connection with wholesale [~~drug manufacturing or~~] distribution;

5. Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant for wholesale [~~the manufacture or~~] distribution of any

drugs, including controlled substances;

6. Compliance with the requirements under any previously granted license or permit, if any; and

7. Compliance with requirements to maintain or make available to the Kentucky Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section.

(b) The Kentucky Board of Pharmacy shall have the right to deny a license[~~permit~~] to an applicant if it determines that the granting of that license[~~permit~~] would not be in the public interest based on health and safety considerations.

(2) A license[~~permit~~] shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drugs; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(3) [~~A permitted manufacturer or wholesaler may sell or distribute federal legend drugs only to the following:~~

~~(a) A currently permitted manufacturer;~~

~~(b) A currently permitted wholesaler;~~

~~(c) A currently licensed pharmacy;~~

~~(d) A currently licensed practitioner;~~

~~(e) A currently licensed hospital, but only for use by or in that hospital;~~

~~(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.~~

~~(4)~~] A license issued pursuant to this administrative regulation may be suspended or revoked for failure to comply with the provisions of KRS 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412,[~~KRS 315.036~~] or this administrative regulation.

Section 4. Application, Fees, Renewals. (1) An application for a license[~~permit~~] shall be submitted to the Board of Pharmacy on "Application for a License to Operate as a Wholesale Distributor[~~Drug Wholesaler or Manufacturer~~] (KBP W 9 08[~~W/M 9:92~~])".

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the licensee;

(b) All trade or business name used by the licensee;

(c) Addresses, telephone numbers, and the names of contract persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and/or operator of the licensee, including:

1. If a person, the name of the person;

2. If a partnership, the name of each partner, and the name of the partnership;

3. If a corporation, the name, social security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs.

(4) All licenses[~~permits~~] shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon renewal[~~proper~~] application accompanied by the renewal fee set forth in 201 KAR 2:050 and shall be nontransferable.

Section 5. Standards. (1) Facilities.

(a) All buildings in which legend drugs are held for wholesale distribution[~~wholesaled~~], repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) Buildings shall meet all applicable federal, state, and local standards. The facility shall have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened.

(c) A facility shall not be located in a residence.

(2) Security.

(a) A wholesale distributor [~~drug distribution center~~] shall be equipped with an alarm system to detect entry after hours.

(b) A wholesale [~~drug~~] distributor shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where legend drugs are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A licensee[~~permit holder~~] shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs. [~~(e) Lists of officers, directors, managers and other persons in charge of distribution, storage, and handling of prescription drugs, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.~~]

(3) Recordkeeping.

(a) Inventories and other records of transactions regarding the receipt and disposition of legend drugs shall be maintained and readily available for inspection or photocopying by authorized law enforcement officials for a period of two (2) years following disposition of the drugs. These records shall include:

1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

2. The identity and quantity of the drugs received and distributed or disposed of; and

3. The dates of receipt and distribution or other distribution of the drugs.

(b) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(4) Written policies and procedures.

(a) Wholesale [~~drug~~] distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and to assure that the wholesale [~~drug~~] distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. Such crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(b) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(c) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesale [~~drug~~] distributor's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(d) There shall be written policies and procedures by which the wholesale[~~wholesaler drug~~] distributor exercises control over the shipping and receiving of all stock within the operation.

(5) Returned, damaged, and outdated prescription drugs. A wholesale distributor[~~operation~~] shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods. When conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed, or returned [~~to the supplier~~], unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity,

strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale [~~drug~~] distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A wholesale distributor[~~operation~~] shall maintain and follow written policy for handling recalls and withdrawals of products. The policy shall cover all recalls and withdrawals of drug products due to:

(a) Any voluntary action on the part of the manufacturer;

(b) The direction of the Food and Drug Administration, or any other federal, state, or local government agency; and

(c) Replacement of existing merchandise with an improved product or new package design.

(7)(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the oldest inventory is distributed first.

(c) A wholesale [~~drug~~] distributor shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing[~~, including Chapter 21, Parts 207, 210, and 211 of the Code of Federal Regulations~~].

Section 6. Pedigree. (1) Effective July 1, 2009 and in accordance with KRS 315.408, each person or entity engaged in the wholesale distribution of prescription drugs that leave or that have ever left the normal distribution channel shall, prior to the distribution of the prescription drug, provide a pedigree to the person receiving the prescription drug.

(2) The pedigree shall include the following information concerning the prescription drug:

(a) The proprietary and established name of the prescription drug;

(b) The dosage;

(c) The size of the container;

(d) The number of containers;

(e) The lot number of control number of the prescription drug;

(f) The business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and

(g) The date of each previous transaction.

(3) Pedigree records shall be maintained and readily be available for inspections or photocopying by authorized law enforcement officials for a period of two (2) years. [~~Pharmacist-in-charge. A manufacturer shall designate a pharmacist-in-charge of the facility who shall be responsible to the board for security and recordkeeping. The pharmacist-in-charge shall review the security and records by conducting an on-site inspection not less than quarterly and recording the results of those inspections in the policy and procedure manual.~~]

Section 7. Violations. (1) A wholesale distributor [~~drug manufacturer or wholesaler~~] shall not distribute legend drugs directly to a consumer or a patient or operate in a manner that endangers the public health.

(2) Violation of any of these provisions shall be grounds for the suspension or revocation of the license.

Section 8 [~~9.~~] Incorporation by Reference. (1) "Application for a License to Operate as a Wholesale Distributor[~~Drug Wholesaler or Manufacturer~~]" (KBP W 9-08[~~W/M 9-92~~]) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511 [~~23 Millcreek Park, Frankfort, Kentucky 40601~~], Monday through Friday, 8 a.m. to 4:30 p.m.

W. MICHAEL LEAKE, President

APPROVED BY AGENCY: September 10, 2008

FILED WITH LRC: September 15, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 30, 2008 at 9 a.m. at the Board's office, Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by Thursday October 23, 2008, five (5) workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administrative Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511; phone (859) 246-2820, fax (859) 246-2823.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows the Board to establish requirements for wholesale distributors.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.402, 315.406, and 315.191(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that requires the Board to promulgate administrative regulations on all matters set forth in KRS Chapter 315.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will establish the requirements for wholesale distributors to be licensed by the board.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation will establish new requirements for licensing of wholesale distributors, including pedigree requirements.

(b) The necessity of the amendment to this administrative regulation: This regulation amendment will allow the board to establish the requirements for licensing of wholesale distributors.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes new requirements for licensing of wholesale distributors authorized in KRS Chapter 315

(d) How the amendment will assist in the effective administration of the statutes: It will clearly state the requirements for licensing of wholesale distributors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates that 800 wholesale distributors that distribute or sells drugs into the Commonwealth will be affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The wholesale distributors will be required to submit more information on an application and renewal application to assist the board in determining that they are shipping drugs that are safe into the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will allow the wholesale distributors to be able to distribute or sell drugs into the Commonwealth in a safe manner.

(5) Provide an estimate of how much it will cost to implement this administrative
regulation:

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacists that utilize a collaborative care agreement.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.402, 315 406 and 315.191(1)(a) requires or authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Licensing Board For Specialists In Hearing Instruments
(Amendment)

201 KAR 7:015. Fees.

RELATES TO: KRS 334.050, 334.080, 334 090, 334.110

STATUTORY AUTHORITY: KRS 334.050, 334.080, 334.090, 334.110, 334.150

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 334.050, 334.080, 334.090 and 334.110 and sets forth in detail all fees charged by the board.

Section 1. Application Fees Schedule. The following fees shall be paid in connection with all types of hearing instrument specialist applications:

(1) The application fee for an apprentice permit shall be $100[~~fifty (50)~~] dollars.

(2) The application fee for a license shall be $100[~~fifty (50)~~] dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the licensure examinations required by the board:

(1) The fee for the National Institute for Hearing Instrument Studies Examination shall be ninety-five (95) dollars.

(2) The fee for all portions of the state examination shall be $150[~~seventy-five (75)~~] dollars.

(3) The fee for an individual portion of the state examination shall be thirty (30)[~~fifteen (15)~~] dollars per portion.

Section 3. Original License Fees. The original license fee shall be $200[~~$150~~] for an applicant who successfully completes all portions of the examination and application processes.

Section 4. Renewal Fees and Penalties. A person holding a license shall not practice in this state after March 2 of the year in which the license is to be renewed unless the license has been renewed as provided by law and payment of the prescribed fee has been made. A license not renewed by March 2 following the expiration date shall be deemed expired and a person holding an expired license shall not engage in the practice of fitting and selling hearing instruments. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The renewal fee for licensure shall be $200[~~$150~~].

(2) The late renewal fee, including penalty, for the grace period extending from January 31 to March 2 shall be $250[~~$200~~].

(3) The renewal fee for renewal of licensure after March 2, including penalty, shall be $200[~~$250~~].

[~~Section 5. Duplicate License Fees. The fee for a duplicate license shall be twenty-five (25) dollars.~~]

This is to certify that the Chair of the Kentucky Licensing Board for Specialists in Hearing Instruments has approved this administrative regulation prior to its filing by the Kentucky Licensing Board for Specialists in Hearing Instruments with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provision of KRS Chapter 334.

MICHAEL HOAGLAND, Chair

APPROVED BY AGENCY: September 9, 2008

FILED WITH LRC: September 10, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2008, at 9 a.m., local time, at the Kentucky Licensing Board for Specialists in Hearing Instruments 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Gerald W. Hoppmann, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601; phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Gerald Hoppman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth in detail all fees charged by the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to set forth fees to be paid by licensed hearing instrument specialists and apprentice permit holders for application, examination, original license, renewal and renewal with penalty.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given statutory authority under KRS 335 050, 334 080, 334.090, 334.110, 334.150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the board to establish fees for applicants, licensees and permit holders by clarifying the procedure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation through statutory authority establishes new fees for application, examination, original license, renewal and renewal with penalty for licensed hearing instrument specialists and apprentice permit holders.

(b) The necessity of the amendment to this administrative regulation: This amended administrative regulation is necessary to set forth the fees for application, examination, initial license, renewal and renewal with penalty.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of authorizing statute by setting forth the fees charged to licensees and permit holders.

(d) How the amendment will assist in the effective administration of the statutes: This amendment defines fees to be charged by the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are approximately 25 applicants for apprentice permits; 38 apprentice permit holders, and 264 licensed hearing instrument specialists in the state of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amended regulation sets forth the amounts for the fees to be charged for application, examination, original license, renewal, and renewal with penalty for licensees and permit holders.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The existing application fee for licensed hearing instrument specialist and apprentice permit is $50 and the new fee would be $100. The existing fee for the state examination is $75 and the new fee would be $150. The existing fee to take an individual portion of the exam is $15 and the new fee would be $30. The existing original fee for license is $150 and the new fee would be $200. The existing renewal fee for license is $150 and the new fee would be $200. The existing late renewal fee, including penalty during the grace period is $200 and the new fee would be $250. The existing late renewal fee after the end of the grace period including penalty is $250 and the new fee would be $300.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation ensures that all licensees and permit holders are aware of the costs associated with obtaining and maintains permits and licenses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost is needed to implement this administrative regulation.

(b) On a continuing basis: No additional cost is needed on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by certificate holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation increases fees for application, examination, original license, renewal and renewal with penalty for licensees and permit holders

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants, licensees and permit holders.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Licensing Board for Specialists in Hearing Instruments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 334.080, 334.090, 334.110, 334.150.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Barbering
(Amendment)

201 KAR 14:150. School records.

RELATES TO: KRS 317.410, 317.450
STATUTORY AUTHORITY: KRS 317.430, 317.440(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: 317.440(1)(b) requires the Kentucky Board of Barbering to promulgate administrative regulations to govern quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools. This administrative regulation establishes requirements for school records.

Section 1. A monthly attendance record of the entire enrollment, including full-time and part-time students, instructors, and apprentice instructors shall[~~must~~] be kept by the schools and received at[~~reported to~~] the board office not later than the tenth calendar day of each month.

(1) A barber school shall be held fully responsible for the completeness and accuracy of the attendance record, which shall show the total hours obtained for the previous month and the total accumulated hours to date for all students, instructors, and apprentice

instructors.

(2) Only the hours recorded shall be submitted each month, and that report shall not be amended without proof or error and shall[and must] be available for inspection[at any time].

Section 2. A copy of the monthly attendance record, as provided to the board office, shall be posted monthly on a bulletin board in the school so it is available at all times to the students, employees, board members, or agents of the board.

Section 3. (1) Barber schools shall be[are] required to keep daily records, approved and signed by the instructor of each student's practical work, work performed on clinic patrons, and classroom work.

(2)[attendance. Records must be approved and signed by the instructors.] This record shall[is to] be included with the student's certification of hours and application for examination as an apprentice upon completion of the [his or her] course or with the certification of hours if a student withdraws or is dismissed from a school or upon the closure of a school and shall be available for inspection.

Section 4. (1) A detailed record shall be kept of all enrollments, withdrawals, dismissals, and graduations.

(2) Certification of hours completed shall be forwarded with all daily records, to the office of the board within ten (10) calendar days of a student's withdrawal, dismissal, graduation, or closure of the barber school.

Section 5. (1) All records shall be kept in a lockable file on the premises of the school and shall be available for inspection.

(2)[3.] The security of all records shall be[are] the responsibility of the school.

This is to certify that the Kentucky Board of Barbering has reviewed and recommended this administrative regulation amendment prior to its adoption, as required by KRS 156 070(4).

NOEL EUGENE RECORD, Chair

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 12, 2008 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on October 22, 2008, at 10 a.m. Eastern Time at the office of the Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by October 15, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Karen Greenwell, Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite, 6, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-7149.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Greenwell, Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the requirements for school records

(b) The necessity of this administrative regulation: This administrative regulation relates to KRS 317.410 and 317.450 and is necessary to establish a specific time frame for the receipt of school records including the monthly attendance record, daily records, enrollments, withdrawals, dismissals and graduations, that barber schools shall be held responsible for the completeness and accuracy of the records, that a copy of the records shall be posted and available to students, employees, board members or agents of the board and that all records shall be kept in a lockable file on the premises of the school and available for inspection at any time.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 317.430 and 317.440(1)(b) by establishing specific requirements in the supervision over the administration of the provisions of this chapter relating to barber schools and the protection of the public against misrepresentation, deceit or fraud in the administrative regulations governing barber school records.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 317.430 and 317.440(1)(b) by informing the barber schools of the specific requirements in regard to the time frame for the receipt of school records, that barber schools shall be held responsible for the completeness and accuracy of the records and that records shall be posted and available for inspection at any time.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment specifies requirements for school records.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to advise the barber schools of the required time period records are to be submitted to the board office, their responsibility to keep complete and accurate records and available for inspection at any time.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to have complete supervision over the administration of the provision of this chapter relating to barber schools and shall promulgate administrative regulations governing the records or barber schools.

(d) How the amendment will assist in the effective administration of the statutes: By defining the specific requirements for school records.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the seven barber schools which are licensed by the Kentucky Board of Barbering currently and all future barber colleges licensed by the Kentucky Board of Barbering as well as the approximate 280 barber students who attend these schools annually.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Barber schools will be held responsible for the timeliness, accuracy and availability of all school records resulting in better communication with students and a guard against misrepresentation, deceit or fraud in record keeping.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will assist schools in preparing students for graduation, encourage students to strive for good attendance and higher scores and will guard against suspect of misrepresentation, deceit or fraud in record keeping.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fee.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals affected by the regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Barber schools licensed by the Kentucky Board of Barbering.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.430 and 317.440(1)(b)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No new costs will be incurred by this administrative regulation amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated by this administrative regulation amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated by this administrative regulation amendment for subsequent years.

(c) How much will it cost to administer this program for the first year? No new costs will be incurred by this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred to administer this administrative regulation amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Please note that the administrative regulation amendment to 210 KAR 14:150 will not create any new revenues for either the agency or State Government. Further, this amendment will not create any new expenditures for the agency, the barber schools, the licensees or State Government. This administrative regulation amendment simply establishes a specific time frame for the receipt of school records, that barber schools shall be held responsible for the completeness an accuracy of all records, that a copy of the records shall be posted, that the original records shall be kept in a lockable file and available for inspection at any time. There are no fee increases and no new fees established by the administrative regulation amendment to 201 KAR 14:150.

GENERAL GOVERNMENT
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:072. Experience.

RELATES TO: KRS 322.040, 322.045, 322.047

STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.045(3), 322.047(2), 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040(4), 322.045(3), and 322.047(2) provides that the board shall promulgate administrative regulations to establish requirements for consideration of experience gained prior to graduation from programs as described in the statute. This administrative regulation establishes these requirements.

Section 1. Evaluation of experience in engineering required under KRS 322.040 shall consider the following:

(1) Experience shall reflect increasing complexity of the engineering tasks and the progressive responsibility of the applicant.

(2) The applicant shall demonstrate knowledge of engineering mathematics, physical and applied sciences, properties of materials, the fundamental principles of engineering design and the application of engineering principles in the solution of engineering problems.

(3) One (1) year of credit may be approved for completion of a master's degree in engineering in an EAC/ABET-accredited program, or one deemed equivalent by the board.

(4) Experience that violates KRS Chapter 322 shall not be approved.

(5) Engineering experience gained in the military services may be approved.

(6) Sales experience may be approved if engineering principles were required and used in that experience.

(7) Experience gained in teaching advanced-level engineering-related courses in a four (4) year EAC/ABET-accredited program, or one (1) deemed equivalent by the board, may be approved.

(8) Experience gained in engineering research and design projects by faculty in an EAC/ABET-accredited program, or one deemed equivalent by the board, may be approved.

(9) Experience may be approved for execution or supervision of construction projects designed by a professional engineer.

(10) The applicant shall demonstrate why experience not gained under the supervision of a professional engineer is eligible for credit.

(11) Qualifying experience shall be complete at the time of application for licensure.

(12) Qualifying experience must all be gained following graduation from the engineering program required by the provisions of KRS 322.040(1)(a)1.

Section 2. Evaluation of experience in land surveying required under KRS 322.045 and 322.047 shall consider the following:

(1) Land surveying experience shall reflect increasing complexity of the land surveying tasks and the progressive responsibility of the applicant.

(2) Experience shall include projects in which the applicant, while under the direct supervision of a practicing professional land surveyor, implemented work involving property conveyance and property boundary determination. The applicant shall also demonstrate experience in the fieldwork aspects of property boundary determination.

(3) One (1) year of experience may be approved for completion of a master's degree in land surveying from a board-approved program in land surveying from a college or university.

(4) A maximum of two (2) years of experience shall be approved for land surveying work prior to graduation under KRS 322.045(1)(c)1, 2, 3, and 322.047(1)(a)1 and 2.

(5) Experience that violates KRS Chapter 322 shall not be approved.

(6) Land surveying experience gained in the military services may be approved.

(7) A maximum of two (2) years of experience may be approved for teaching land surveying courses at the postsecondary level.

(8) Qualifying experience shall be complete at the time of application.

(9) Notwithstanding subsections (3), (4), and (7), in no case shall an applicant's experience gained after graduation be less than two (2) years.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: August 26, 2008
FILED WITH LRC: August 26, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008 at 2:30 p.m., local time, at 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Buckley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the requirements for the experience component of engineering and surveying licensure.

(b) The necessity of this administrative regulation: KRS 322.040(4) and 322.045(3) requires the board to establish an administrative regulation for experience.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290(4) authorizes the board to promulgate administrative regulations necessary for the proper performance of its duties. The regulation establishes experience requirements per KRS 322.040(4) and 322.045(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes detailed requirements related to the experience component of engineering and surveying licensure to assist the board in evaluating applicants for licensure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendment will remove a possible ambiguity regarding the engineering experience credit by clarifying that the experience must be gained following graduation from the engineering program required by KRS 322.040(1)(a)1.

(b) The necessity of the amendment to this administrative regulation: The proposed amendment is necessary because several states do not allow experience gained prior to graduation to be considered for licensure. Therefore, Kentucky applicants who are initially licensed in Kentucky may have difficulty becoming licensed as professional engineers in these states.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment deals with the subject of pre-graduation experience credit as required by KRS 322.040(4).

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will provide the information necessary for the board to evaluate the experience component engineering applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed regulation will not affect businesses, organizations, or state and local governments. It will affect engineering applicants who attempt to use experience gained prior to graduation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The board will continue to administer the experience regulation. No other regulated entities are affected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This proposed amendment will remove an obstacle to certain engineers licensed in Kentucky from becoming licensed in certain other states

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased as a result of this proposed amendment.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Licensure for Professional Engineers and Land Surveyors

3 Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 322.040(4)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no revenue or expenditure effects for any government agency.

(a) How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government agency (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? $0

(d) How much will it cost to administer this program for subsequent years? $0

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board Of Chiropractic Examiners
(Amendment)

201 KAR 21:041. Licensing; standards[~~renewals~~], fees.

RELATES TO: KRS 312 085, 312.095, 312.175, 312.145

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312 019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

Section 1. Initial Application Fee. With the application submission, a nonrefundable application fee in the amount of $350 shall be paid to the board.

Section 2. Licenses. (1) Licenses issued by the board shall set forth the name of the issuing board, the name of the licensee, the number of the license, the date of the license issuance, and shall be signed by a minimum of three (3) members of the board and have the seal of the board affixed.

(2) All members of the board shall be given the opportunity to sign each license.

Section 3. License Renewal. (1)(a) Each licensee of the board shall:

1. Annually renew his license on or before the first day of March; and

2. Submit his application for license renewal to the board on the forms provided by the board.

(b)1. With the application, a licensee seeking active status shall pay a renewal fee of $250.

2. An inactive licensee shall pay a renewal fee of seventy-five (75) dollars.

(c) The restoration fee for nonrenewal of licensure in accordance with KRS 312.175(2)-(4) shall be $250.

(d)1. New licensees shall complete a two (2) hour jurisprudence course prior to their first license renewal.

2. Proof of attendance of at least twelve (12) hours of board approved continuing education shall be submitted with the renewal application.

3. The jurisprudence course shall account for two (2) of the twelve (12) hours of continuing education required for annual license renewal.

(2) The educational program shall meet one (1) or more of the following minimum requirements:

(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors[~~, of at least twelve (12) hours of instruction, only six (6) hours of which may be obtained out-of-state, over at least two (2) days~~]; or

(b)1. An educational program approved by the board, or a committee designated by the board to act between sessions of the board[~~, with a total of at least twelve (12) hours of instruction over at least two (2) days~~].

2.a. To be considered, the educational program shall be sponsored by a national or state chartered organization of chiropractors open to all doctors of chiropractic in Kentucky who desire to attend.

b. The instructors and speakers shall be recognized to have a national reputation in the field of chiropractic education or allied sciences or they shall be generally recognized as having a high degree of skill in the field of instruction.

c. The programs to be presented shall contain subjects of significant benefit to licensees and on a postgraduate level of education.

(c) Six (6) hours of the required twelve (12) hours for relicensure must be obtained within the state of Kentucky.

(d) There shall be a maximum allowance of eight (8) hours of continuing education hours obtained in one (1) day.

(3) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation by providing the following information to the board:

(a) The name of the course;

(b) The name of the sponsoring organization;

(c) The objective of the program;

(d) The number of hours over which the educational program will be presented and the dates presented;

(e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;

(f) The instructors' or speakers' educational background and other relevant qualifications; and

(g) The name and address of the person authorized to certify attendance.

(4) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board to determine compliance with subsection (3) of this section.

(5)(a) A proposed program shall be submitted to the board for approval at least sixty (60) days prior to the date of the presentation.

(b) The board, or a designee of the board to act between meetings of the board, shall give written notification of the board's approval or disapproval of the program to the sponsoring party not less than thirty (30) days after receiving the proposed educational program.

(c) Within thirty (30) days of completion of the program, the sponsoring party shall submit to the board a written certification of the licensees in attendance at the program, the sessions attended by each, and the number of hours of each session attended.

(6) If the licensee is in active practice but is not in active practice in Kentucky and does not intend to practice in Kentucky during the renewal period, he shall meet the educational requirements of the state or jurisdiction in which he is practicing, shall affirm that the requirements have been met, and shall furnish proof of compliance if requested by the board.

(7) If the licensee is not in active practice, his license may be renewed, with the inactive status being noted, without satisfying the educational requirements, but before the licensee may again be licensed to engage in the active practice of chiropractic, he shall meet the educational requirements prescribed by the board after a review of the licensee's verified resume of education and experience and shall satisfactorily pass an examination for clinical competency as may be prescribed by the board.

Section 4. Change of Address. Each licensee shall notify the board within ten (10)[~~thirty (30)~~] days of each change of mailing address or place of business.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "New Licensee Application", 2006,

(b) "Application for Annual License Renewal", 2006;

(c) "Annual Inactive/Non-Resident License Renewal Application", 2007; and

(d) "Application for Activation/Reinstatement of Kentucky License", 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42142, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK WOODWARD, President

APPROVED BY AGENCY: September 8, 2008

FILED WITH LRC: September 15, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2008, at 9 a.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 23, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regu-

lation to the contact person.

CONTACT PERSON: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142; phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karalee Oldenkamp, D.C., Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the procedures relating to application for licensure, license renewal, and fees for practitioners of chiropractic in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The necessity of this regulation is to ensure that applicants are placed on notice as to the proper procedures and fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations to ensure regulation of applicants for licensure and to set fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the manner in which applicants apply for licensure and licensees renew their licenses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the manner in which applicants apply for licensure and licensees renew their licenses.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the manner in which application is made to the Board for new licenses and for renewal.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting forth the procedures and fees for application and renewal thereby placing the public on notice.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the manner in which applications are made to the Board and licenses are renewed which will reduce the amount of time the Board's staff spends answering these basic questions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation directly impacts the approximately 65 annual licensure applicants and 791 licensees in the Commonwealth of Kentucky.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: All licensees are required to complete the applications and pay the fees associated with initial licensure and renewal or reinstatement as set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial application fee is $350. The annual renewal fee is $250 The annual inactive licensure fee is $75. The restoration fee is $250.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants for initial licensure and those who are seeking inactive status or renewal are put on notice of specific requirements for obtaining and maintaining licensure by incorporating the appropriate forms and referencing the appropriate fees. As a result of compliance, licensees will be allowed to conduct business as a licensed chiropractor in the Commonwealth.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this amended regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not directly increase any existing fees for licensure and renewal.

(9) TIERING: Is tiering applied? Tiering was applied. Licensees who are renewing active licenses are charged more money than licensees with inactive licenses as they are making money by actively practicing chiropractic with those licenses.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure
for Occupational Therapy
(Amendment)

201 KAR 28:090. Renewals.

RELATES TO: KRS 319A.160

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 319A.070(3) allows the board to promulgate administrative regulations establishing procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

Section 1. (1) A person licensed as an OT/L or an OTA/L shall annually, before October 31, pay to the board a renewal fee as set forth in 201 KAR 28:110 for the renewal of the license and file an "Annual Renewal Application", incorporated by reference in Section 4. A license not renewed before October 31 of each year shall expire.

(2) A license issued to a person during the last ninety (90) days of a licensure period shall expire at the end of the subsequent licensure period.

Section 2. A sixty (60) day grace period shall be allowed beginning October 31, during which time an individual may renew his or her license upon payment of the late renewal fee as set forth in 201 KAR 28:110. A license not renewed before December 31 shall terminate based on the failure of the individual to renew in a timely manner. Upon termination, the licensee shall no longer be eligible to practice occupational therapy in the Commonwealth and shall be sent notice at the last known address available to the board of termination, and to cease and desist practice.

Section 3. After the sixty (60) day grace period, an individual with a terminated license shall have the license reinstated upon:

(1) Payment of the late renewal fee plus a reinstatement fee as set forth by 201 KAR 28:110;

(2) Documentation of employment from the time of termination until the present;

(3) Documentation that licensure, certification, or registration in other states is in good standing; and

(4) Documentation of current or initial certification by the National Board for Certification in Occupational Therapy or its equivalent.

Section 4. Incorporation by Reference. (1) "Annual Renewal Application", 8/06 ed., is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky

40602, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLY NASH, Chairperson

APPROVED BY AGNECY: September 11, 2008

FILED WITH LRC: September 11, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 2 p.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Gerald W. Hoppmann, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerald Hoppmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for annual renewal of licenses.

(b) The necessity of this administrative regulation: KRS Chapter 319A provides that the board shall promulgate administrative regulations establishing the procedures for annual renewal of licenses. This administrative regulation establishes those procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319A 070(3)(l) authorizes the board to promulgate administrative regulations for licensing. KRS 319A.160(1) provides that licenses shall be subject to annual renewal.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulations sets out the requirements for renewing licenses which the board will follow.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This amendment specifies that persons licensed within ninety days of the renewal date are not required to renew until the subsequent year.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to implement a change to the renewal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319A.070(3)(l) authorizes the board to promulgate administrative regulations for licensing. KRS 319A.160(1) provides that licenses shall be subject to annual renewal.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulations sets out the requirements for renewing licenses which the board will follow.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board licenses approximately 1,700 persons in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees who receive their license within ninety days of the renewal date will not be required to submit their renewal forms until the following year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No change in fees from the regulated entities is anticipated as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits which will accrue to the entities is they will know the date that their renewal is due.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no costs associated with the implementation of this administrative regulation.

(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing and enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? This administrative regulation sets out the criteria that is applicable to all persons who have received their license within ninety days of the renewal date.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Occupational Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319A.070(3), 319A.160(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No new costs are anticipated from the change of renewal dates.

(d) How much will it cost to administer this program for subsequent years? See answer to 4c.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:125. Transportation of fish.

RELATES TO: KRS 150 010, 150.025, 150.170, 150.180, 150.235, 150 485

STATUTORY AUTHORITY: KRS 13A.350, 150.025(1)(c), (1)(h), 150.180(6), 150 235

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides for the control over the transportation of fish, fish eggs, live bait, and other aquatic organisms into, through, and within the state. It is necessary to protect the resident fish population. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.

Section 1. Definitions (1) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and does not include fish used in aquaculture, the bait industry, or fish sold for stocking in Kentucky.

(3) "Certified VHS free facility" means a fish-rearing facility that has been certified by APHIS to be VHS free.

(4) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(5) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

(6) "VHS positive state" means any state in the United States, or any Canadian province, listed by APHIS as being positive for Viral Hemorrhagic Septicemia (VHS).

Section 2. A Fish Transportation Permit is not needed:

(1) By an individual to transport aquarium species;

(2) By permitted Kentucky fish propagators as established in 301 KAR 1:115, except when transporting fish into Kentucky from another state;

(3) By individuals with a sport or commercial fishing license to transport legally caught bait or fish;

(4) By individuals that are transporting fish purchased from a licensed live bait dealer for stocking in private waters;

(5) By agents of the department while performing their normal duties;

(6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

Section 3. Live Fish, Eggs, Live Bait, or Other Aquatic Organisms. (1) All individuals, corporations, or other business entities that transport any live fish, fertilized fish eggs, live bait as defined in 301 KAR 1:132 or other live aquatic organism, except those individuals listed in Section 2 of this administrative regulation, into, within, or through Kentucky shall have in possession a:

(a) Fish Transportation Permit issued in the name of the individual, corporation, or other business entity transacting the business;

(b) Bill of lading showing the origin and destination of the organisms being transported.

(2) Live Fish and Bait Dealers License, as established in 301 KAR 1:132, must also be in possession if the organisms are to be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free and no prohibited species listed in 301 KAR 1:122 shall be present.

(4) If the live fish or fertilized eggs being transported and unloaded in Kentucky are from a known VHS positive state, in addition to the requirements established in Sections 3(1) and (2) and 4 of this administrative regulation, the following requirements shall also apply:

(a) If the origin of the live fish or fertilized eggs is from a certified VHS free facility, a copy of the documentation showing that the facility is VHS free shall also be in possession.

(b) If the origin of the live fish or fertilized eggs is from a non-certified VHS free facility then:

1. The live fish or fertilized eggs shall only be unloaded at a state inspected fish-processing plant or research and diagnostic laboratory;

2. A copy of the APHIS VS 1-27 permit for Movement of Restricted Animals issued by an APHIS area office shall also be in possession; and

3. Water from the fish transportation tank shall only be discharged into a municipal sewage system that includes waste water disinfection or into either a nondischarging settling pond devoid of fish or a settling pond that disinfects according to all EPA criteria.

(5) If the live fish or fertilized eggs are from a known VHS positive state and are only being transported through Kentucky then in addition to the requirements established in Sections 3(1) and (2) and 4 of this administrative regulation the following requirements shall also apply:

(a) No live fish or eggs shall be unloaded in Kentucky; and

(b) No water shall be discharged or exchanged while in Kentucky.

(6) Live fish, fertilized eggs, live bait, or other aquatic organisms being transported from a known VHS positive state into, within, or through Kentucky that do not meet all requirements established in Sections 3(1), 3(2), 3(3) and 4 may be confiscated for disposal purposes.

Section 4. Fish Transportation Permit Application. (1) An individual, corporation, or other business entity that wants to transport fish, fish eggs, live bait, or other aquatic organisms into, within, or through Kentucky shall submit a completed Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR 3:022 and the following, if transporting fish or fertilized eggs from a VHS positive state:

(a) Copy of the documentation showing that the facility that the fish or fertilized eggs are coming from is Certified as being VHS free; or

(b) Copy of the APHIS VS 1-27 permit if the facility is not Certified as being VHS free.

(2) An individual, corporation, or other business entity shall not transport fish, fish eggs, live bait or other aquatic organisms into, within, or through Kentucky until an approved Fish Transportation Permit is in possession.

(3) Prior to transporting any live fish or fertilized eggs into or through Kentucky from a facility in a known VHS positive state that is not listed on an issued Fish Transportation Permit the permittee shall:

(a) Notify the department; and

(b) If approved, be sent an updated Fish Transportation Permit listing the approved facility.

Section 5. Transportation of Roe-Bearing Fish and Roe. (1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as defined in 301 KAR 1:155 into, within, or through Kentucky shall have in possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester's name and commercial fishing license and roe-bearing harvester's permit numbers listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155.

Section 6. All officers and agents of the department have the authority to demand of the transporter, at any time, that no prohibited species listed in 301 KAR 1:122 are present and proof that all appropriate permits and documentation are in possession.

Section 7. Fish Transportation Permit Revocation and Nonrenewal. (1) The Department shall revoke and not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they:

(a) Falsify the documentation needed in possession to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit; or

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

(2) An individual, corporation, or other business entity whose

Fish Transportation Permit has been denied, revoked or not renewed may request an administrative hearing pursuant to KRS Chapter 13B.

Section 8. Incorporated by Reference. (1) Application for Fish Transportation Permit, 2008 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Section 1. All individuals, corporations, or other business entities who transport any live fish, live bait (as defined in 301 KAR 1:130) or other live aquatic organism into, within, or through the Commonwealth of Kentucky must have a transportation permit issued in the name of the individual, corporation, or other business entity transacting the business.~~

~~Section 2. All officers and agents of the Department of Fish and Wildlife Resources have the authority to demand, at any time, proof by the transporter that:~~

~~(1) An appropriate transportation permit or exact copy, listing the species carried, is in possession.~~

~~(2) An appropriate live fish and bait dealers license has been issued, if the organisms are to be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of the commonwealth.~~

~~(3) The organisms in transport are free of disease and that no prohibited species listed in 301 KAR 1:122 are present.~~

~~(4) That a bill of lading showing the origin and destination of all of the organisms being transported is in possession.~~]

BENJY KINMAN, Acting Deputy Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 15, 2008 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 4 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation controls the transportation of fish, fish eggs, live bait and other aquatic organisms into, through, and within the state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the resident fish populations of Kentucky by attempting to prevent the introduction of Viral Hemorrhagic Septicemia (VHS), a disease of fish, into Kentucky. The amendments to this regulation complement the USDA APHIS Amended Federal Order for VHS, dated April 2, 2008.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department to promulgate administrative regulations to regulate the transportation of game and fish and to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of the chapter. KRS 150.180 gives the Department the authority to issue a fish transportation permit that allows only the transportation of fish and wildlife in the state that do not constitute a menace to the state and are free of disease. KRS 150.235 states that a license or permit must be procured prior to performing any authorized act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the purpose of KRS 150.025 by regulating the transportation of fish and other aquatic organisms that are transported into, through, and within Kentucky. It fulfills the purpose of KRS 150.180 by prohibiting fish that either may become a menace to the state or are carrying a disease. It also fulfills the purpose of KRS 150.235 by requiring a person to have in possession a fish transportation permit while transporting fish, fish eggs, live bait and other aquatic organisms into, within, or through Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will regulate the movement of fish, fish eggs, live bait, and other aquatic organisms into and through Kentucky from VHS positive states and allow a commercial fisherman's helper to transport roe fish and roe in the absence of the commercial fisherman.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prevent the transportation of undesirable and diseased fish into Kentucky and to allow an unlicensed commercial fisherman's helper to legally transport roe and roe fish.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation All individuals who transport live fish, fish eggs, live bait, and other aquatic organisms into, through, or within the state will be affected. Presently, the Fisheries Division issues 80-100 Transportation permits per year. It is not known how many fish haulers transporting fish from VHS positive states will be affected. Currently, there are 107 commercial fishermen who reported harvesting roe fish during the past two years and their unlicensed helper may transport roe fish or roe if they elect to obtain this permit.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who transport live fish or fish eggs into or through Kentucky from a VHS positive state will now need to have documentation that the fish being transported are from a certified VHS free facility or a copy of the APHIS VS 1-27 permit for Movement of Restricted Animals to comply with this amendment. Presently, commercial fishermen's helpers are prohibited from fish or roe transport. These helpers may now apply for this permit and legally transport fish or roe in the absence of the commercial fisherman.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a $25 fee for the annual Fish Transportation Permit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who transport fish from a VHS positive state will not violate a Federal Order when transporting fish from VHS positive states. Commercial fishermen's helpers will now be able to transport roe fish and roe in the absence of a commercial fisherman.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initially, the number of permits issued is expected to increase by 50 percent to 120 permits per year. Therefore, there will be an increase in administrative cost to issue and track the permits.

(b) On a continuing basis: There will be no additional cost on a continuing basis after the first year of implementation.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The cost of the Fish Transportation Permit will need to increase from $0 to $25 to cover the increased administrative costs. This fee will be established in 301 KAR 3.022.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fish transportation permit fee will be established in a separate regulation, License, tag, and permit fees, 301 KAR 3.022.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who transport fish, fish eggs, live bait and other aquatic organisms into, within, or through the state were treated equally. In addition all commercial fishermen are being treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department to promulgate administrative regulations to regulate the transportation of game and fish and to promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of the chapter. KRS 150.180 gives the Department the authority to issue a fish transportation permit that allows only the transportation of fish and wildlife in the state that do not constitute a menace to the state and are free of disease.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $3,000 will be generated for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately $3,000 per year will be generated during subsequent years.

(c) How much will it cost to administer this program for the first year? Staff currently spends about 75 hours per year administering the program at a cost of about $2,900 The number of permits are expected to increase by 50 percent at an estimated cost of $4,400.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program in subsequent years is $4,400.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:410. Taking of fish by other than traditional fishing methods.

RELATES TO: KRS 150.010, 150 025(1), 150.120, 150.170, 150.175, 150.235, 150.360, 150.370, 150.440, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish methods of taking fish. This administrative regulation establishes the procedures for taking sport and rough[~~commercial~~] fish by other than traditional fishing methods such as: [~~snagging,~~] underwater spearing, and "scuba diving"; sport fishing trotlines, jugging and setlines, the taking of rough fish from backwaters, gigging and[~~, grabbing or~~] snagging, tickling and noodling (hand grabbing), and bow fishing. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet

Section 1. Definitions. (1) "Archery equipment" means a long bow, recurve bow or compound bow incapable of holding an arrow at full draw without air from the archer.

(2) "Bowfishing[~~Bow fishing~~]" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment or a crossbow.

(3) "Crossbow[~~Cross-bow~~]" means a bow designed or fitted with a device to hold an arrow at full or partial draw without the aide from an archer.

(4)[~~"Bow and arrow" means a:~~
~~(a) Longbow;~~
~~(b) Compound bow; or~~
~~(c) Crossbow.~~
~~(2)~~] "Cull" means to replace a fish in your daily creel limit with another fish of the same species.

(5)[~~(3)~~] "Jugging" is defined in KRS 150.010(15)

(6) "Rough fish" is defined in KRS 150-010(32).

(7)[~~(4)~~] "Setline" is defined in KRS 150.010(34).

(8)[~~(5)~~] "Snagging" is defined in KRS 150.010 (35).

(9)[~~(6)~~] "Sport fisherman" is defined as a person holding a valid resident or nonresident fishing license and include those persons who are license exempt as specified in KRS 150.170.

(10)[~~(7)~~] "Sport Fishing Trotlines" is defined in KRS 150.010(36).

Section 2. Sport fishermen shall comply with the requirements in this administrative regulation.

Section 3. Skin and Scuba Diving and Underwater Spear Fishing. (1) Skin or scuba diving is prohibited in all lakes owned by the department [~~of Fish and Wildlife Resources~~], except as stated in subsections (2) and (3) of this section.

(2) Skin or scuba diving may be permitted in salvage operations upon receipt of written permission by the diver from the Division of Law Enforcement or the local Conservation Officer assigned to the specific body of water in which the diving is to take place.

(3) Skin or scuba diving is permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a victim of drowning

(4) Underwater spearing of fish with hand held spear or mechanically-propelled spear is legal throughout the year in lakes 1,000 acres in size or larger as measured at normal or summer pool level.

(a) A participant in this type of sport shall be submerged in the water in which spearing takes place.

(b) Only rough fish shall be taken and an appropriate fishing license is required.

(c) The daily limit is fifteen (15) rough fish of which not more than five (5) shall be catfish (aggregate).

Section 4.[~~3.~~] Sport Fishing Trotlines, Jugging, and Setlines. (1) Tagging and Checking.

(a) Each sport fishing trotline, jug line or setline shall be permanently labeled or tagged with the name and address of the person using it.

(b)[~~1.~~] All sport fishing trotlines, jug lines, and setlines shall be baited, checked and all fish removed at least once every twenty-four (24) hours.

(c)[~~2.~~] The fisherman shall remove these devices from the

water, from the bank, or from tree limbs when he or she has finished fishing.

(d)[3.] Trotlines, setlines, or jug lines that are not properly labeled, remain unchecked, or unbaited for over twenty-four (24) hours may be confiscated.

(2) Fishing requirements.

(a) An individual sport fisherman shall not use more than:

1. Two (2) sport fishing trotlines; or

2. Twenty-five (25) setlines; or

3. Fifty (50) jug lines.

(b) A boat containing multiple sport fishermen shall not use more than fifty (50) jug lines per boat.

(c) Sport fishing trotlines shall be set at least three (3) feet below the water's surface and contain no more than fifty (50) single or multibarbed hooks placed no closer together than eighteen (18) inches.

(d) A jug line or setline shall not have more than one (1) single or multibarbed hook.

(e) An appropriate fishing license is required.

(3) Closed waters [A] Sport fishing trotlines[trotline], jugs, or setlines shall not be used in the following waters:

(a) In the Tennessee River within 700 yards of Kentucky Dam.

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge.

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area Lakes, Ballard County.

2. Peal Wildlife Management Area Lakes, Ballard County.

3. Swan Lakes Wildlife Management Area Lakes, Ballard County.[those specifically listed in subsection (3)(e) of this section.]

(d) In the following areas of the Ohio River.

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall.

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike.

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall.

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall.

5. McAlpine Dam downstream to the K&I railroad bridge.

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall.

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall.

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall. [(e) A sport fishing trotline, jugs, or setlines shall not be permitted in lakes under 500 surface acres owned or managed by the department, except the following:

1. Ballard Wildlife Management Area Lakes, Ballard County.

2. Peal Wildlife Management Area Lakes, Ballard County.

3. Swan Lakes Wildlife Management Area Lakes, Ballard County.]

Section 5 [4.] Rough Fish from Backwaters. (1) The Commissioner of the Department of Fish and Wildlife Resources may give a Conservation Officer or another employee[designate all wildlife and boating officers and other employees] of the department authority[of Fish and Wildlife Resources] to establish areas and supervise [areas for] the taking of all types of rough fish as described in 301 KAR 1:060 from the backwaters, or overflow areas of streams, rivers and reservoirs as long as the backwater, or overflow area is connected with the stream, river or reservoir.

(2) When the backwater is no longer connected with the stream or reservoir the landowner may, under the supervision of the conservation officer or another employee of the department[wildlife and boating officer], direct the taking of rough fish in accordance with this administrative regulation.

(3) A conservation officer or another employee of the department shall not permit the taking of any fish from any slough, or backwater, or overflow area without first having the permission of the landowner on whose land the water has overflowed.

(4) The conservation officer[The wildlife and boating officer] or another employee of the department[other designated officials] are authorized to determine the exact dates and time when the taking of these rough fish shall commence and cease.

(5) All person engaged in this type of fishing shall have an appropriate fishing license.

(6)[(2)] Fish may be taken in the above-described areas by any method except by the use of poison, electrical devices or firearms. If nets and seines are used, they shall be appropriately tagged and the user shall have an appropriate commercial fishing license.

[(3) A wildlife and boating officer or designated official shall not permit the taking of any fish from any slough, or backwater, or overflow area without first having the permission of the landowner on whose land the water has overflowed.

(4) All persons engaged in this type of fishing shall have a fishing license.]

Section 6.[5.] Gigging and[, Grabbing or] Snagging[, Tickling, and Noodling]. (1) Season and methods of gigging and snagging

(a) Gigging and snagging are permitted February 1 through May 10 except as provided in subsection (3)(c) of this section.

(b) A person may gig or snag from the bank of a stream or lake, but shall not gig or snag from a boat or platform, except that gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

(c) Persons may gig rough fish through the ice if the surface is frozen thick enough to stand on and the gigger shall gig while supported by the ice

(2) Snagging equipment.

(a) A snagging rod shall not exceed a length of seven and one-half (7 1/2) feet including the handle.

(b) The rod shall be equipped with line, guides, and a reel.

(c) Fish may be taken by snagging using one (1) single or treble hook attached to the line except in the Green River and its tributaries and the Rolling Fork River and its tributaries, where five (5) hooks, either single or treble may be used.

(3) Areas open to gigging and snagging.

(a) Gigging or snagging for rough fish is permitted night and day in lakes and streams, except where prohibited in subsections (1), (3)(b), and (3)(c) of this section.

(b) Gigging and snagging is specifically prohibited in the following lakes, streams and their tributaries.

1. The Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek, and in the Cumberland River in the area below Barkley Lake Dam downstream to US 62 bridge.

2. The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County.

3. The Rough River, below Rough River Lake Dam Downstream to Highway 54 Bridge in Breckinridge and Grayson Counties.

4 Cave Run Lake.

5 Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River

6 Within 200 yards of any dam on any stream, except as specified in subsection (3)(c) pertaining to the Tennessee River below Kentucky Lake Dam.

7. Gigging is prohibited in the Tennessee River from Kentucky Lake Dam downstream to its confluence with the Ohio River.

(c) Rough Fish may be taken only by snagging in the Tennessee River below Kentucky Lake Dam.

1 Snagging is permitted in the Tennessee River between the Kentucky Lake Dam and the new US 62 Bridge twenty-four (24) hours per day from January 1 through May 31.

2 From June 1 through December 31, snagging is only permitted from sunset to sunrise (local time) between the Kentucky Lake Dam and the new US 62 Bridge.

3. Snagging is prohibited year round in the Tennessee River from the new US 62 Bridge to the I-24 Bridge.

4 Snagging is permitted year round in the Tennessee River from the I-24 Bridge to its confluence with the Ohio River

5 Snagging is not permitted under the US 62 bridge, the P&L

Railroad bridge, or from the fishing piers located below the new US 62 Bridge.

(4) Creel limits.

(a) The statewide daily creel limit for rough fish taken by gigging and snagging in areas open, except in the Tennessee River below Kentucky Lake Dam and in the Cumberland River below Barkley Lake Dam as established in subsections (4)(b) and (4)(c) of this section, is unlimited except that only two (2) paddlefish may be taken daily statewide.

1. All gigged or snagged paddlefish, in all areas open to gigging and snagging, shall be taken into immediate possession and shall not be released or culled.

2. Once the daily limit of paddlefish has been reached, all snagging shall cease.

3. All sport fish that are gigged or snagged in all waters open to gigging or snagging, except in the Tennessee River below Kentucky Lake Dam as established in subsection (4)(c) of this section, shall be immediately returned to the water, regardless of condition.

(b) Daily gigging and snagging limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8) fish, including paddlefish.

1. All rough fish, including paddlefish, shall be taken into immediate possession (no cull), except for shad or herring.

2. All sport fish that are gigged or snagged shall be immediately returned to the water, regardless of condition.

(c) Daily limit for fish in the Tennessee River below Kentucky Lake Dam that are open to only snagging shall be a maximum of eight (8) fish, including paddlefish.

1. All fish snagged, including paddlefish and sport fish, shall be taken into immediate possession (no cull), except for shad or herring.

2. Snagging shall cease if a daily limit of sport fish has been obtained even if the creel limit for that sport fish is less than 8.

Section 7. Tickling and Noodling (Hand Grabbing). (1)[~~Fish may be taken by snagging using a single hook or one (1) treble hook except as provided in subsection (2) of this section.~~

~~(2) In the Green River and its tributaries and the Rolling Fork River and its tributaries, five (5) hooks, either single or treble hooks, may be used.~~

~~(3) Methods of gigging and snagging. A person may gig or snag from the stream or lake banks, but shall not snag or gig from a boat or platform, except that gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.~~

~~(4) Seasons. Gigging and snagging are permitted February 1 through May 10 except as provided in subsection (8) of this section. Persons may gig rough fish through the ice if the surface is frozen thick enough to stand on and the gigger shall gig while supported by the ice.~~

~~(5) Creel limits.~~

~~(a) The statewide daily creel limit for rough fish taken by gigging and snagging in areas open, except in the Tennessee River below Kentucky Dam and in the Cumberland River below Barkley Dam as provided in subsections (7) and (8) of this section, is unlimited with the exception that only two (2) paddlefish may be taken daily statewide. All snagged paddlefish, in all areas open to gigging and snagging, shall be taken into immediate possession and shall not be released or culled. Once the daily limit of paddlefish has been reached, all snagging shall cease. Harvest of sport fish by gigging and snagging is prohibited statewide except as provided for in subsection (8) of this section.~~

~~(b) Daily creel limits in the Tennessee River below Kentucky Dam open to snagging and in the Cumberland River below Barkley Dam open to both gigging and snagging shall be eight (8) fish, of which no more than eight (8) may be paddlefish. Harvest of sport fish is permitted by snagging only in the Tennessee River as provided by subsection (8) of this section.~~

~~(6) Areas where gigging and snagging are permitted. Gigging or snagging for rough fish is permitted night and day in lakes and streams, except where specifically prohibited in subsections (3), (4), (7), and (8) of this section.~~

~~(7) Gigging and snagging is specifically prohibited in the following lakes, streams and their tributaries, except as provided in subsection (8) of this section.~~

~~(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.~~

~~(b) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County.~~

~~(c) The Rough River, below Rough River Lake Dam Downstream to Highway 54 Bridge in Breckinridge and Grayson Counties.~~

~~(d) Cave Run Lake.~~

~~(e) These tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River.~~

~~(f) Within 200 yards of any dam on any stream, except as specified in subsection (8) pertaining to the Tennessee River below Kentucky Dam.~~

~~(8) Snagging shall be permitted in the Tennessee River below Kentucky Dam.~~

~~(a) Season and area.~~

~~1. Snagging is permitted in the Tennessee River between the Kentucky Lake dam and the new US 62 Bridge twenty-four (24) hours per day from January 1 through May 31.~~

~~2. From June 1 through December 31, snagging is only permitted from sunset to sunrise (local time) between the Kentucky Lake dam and the US 62 Bridge.~~

~~3. Snagging is not permitted year round in the Tennessee River from the new US 62 Bridge to the I-24 Bridge.~~

~~4. Snagging is permitted year round in the Tennessee River from the I-24 Bridge to its confluence with the Ohio River.~~

~~5. Snagging is not permitted under the US 62 bridge, the P&L Railroad bridge, or from the fishing piers located below the US 62 Bridge.~~

~~(b) Equipment.~~

~~1. A snagging rod shall not exceed a length of seven and one-half (7 1/2) feet including the handle.~~

~~2. The rod shall be equipped with line, guides, and a reel.~~

~~3. No more than one (1) single or treble hook may be attached to the line.~~

~~(c) Creel limit.~~

~~1. All fish snagged shall be taken into immediate possession (no cull), except for shad or herring.~~

~~2. The daily creel limit shall be an aggregate of eight (8) fish of which no more than eight (8) fish can be paddlefish and;~~

~~3. Snagging shall cease once a daily limit for any sport fish is obtained.~~

~~(9) All game fish caught by gigging or snagging, except those taken as permitted in subsection (8)(c) of this section, in the Tennessee River below Kentucky Dam shall be returned to the water immediately, regardless of condition.~~

~~(10)(a)~~] Tickling and noodling (hand grabbing) season for rough fish shall be June 1 to August 31 during daylight hours.

(2)[~~(b)~~] Tickling and noodling shall be permitted in all waters.

(3)[~~(c)~~] The daily creel limit for tickling and noodling shall be fifteen (15) fish of which not more that five (5) shall be catfish (aggregate).

Section 8 [~~6~~] Bow Fishing (1) A person shall not take with archery equipment or a crossbow[~~a bow and arrow~~]:

(a) Sport fish, as listed in 301 KAR 1:060, Section 1.

(b) More than five (5) catfish (aggregate) and two (2) paddlefish daily.

(c) All paddlefish and catfish shot with archery equipment or a crossbow shall be taken into immediate possession and counted toward the daily limit and shall not be released or culled.

(2) Bow fishing is open statewide; except[~~as noted below where bow fishing is prohibited~~]:

1. In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek, and all tributaries within one-half (1/2) mile of their junction with the Cumberland River within this area.

2. From a boat in restricted areas below navigation, power generating, or flood control dams.

BENJY KINMAN, Acting Deputy Commissioner
For Jonathan Gassett, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: September 11, 2008
FILED WITH LRC: September 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 2 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by other than traditional fish methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate creel limits and possession limits of fish, to fix open seasons, to regulate the type of any device and methods used, and areas that are open to take fish. KRS 150.440 authorizes the Department to set seasons and creel limits for rough fish. KRS 150.470 authorizes the department to set size, season, and possession limits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will full fill the purposes of KRS 150 025, 150.440, and 150.470 by regulating the devices and methods used, areas open, and setting the seasons and limits that are to be used when taking fish with non-traditional fishing methods.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will add recurve bow to the gear that can be used to bow fish. It will also require bow anglers to take into immediate possession (no cull or release) any catfish or paddlefish shot with archery equipment or a crossbow.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend a previous omission and now allow the use of a recurve bow. Also, it will prohibit the release (no cull) of catfish or paddlefish that are taken by bow fishing.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who bow fish in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who bow fish can now legally use a recurve bow to take fish. Bow anglers will be required to harvest each catfish and paddlefish taken by bow fishing. Culling and release of bow shot catfish and paddlefish will not be allowed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to individuals who bow fish.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, the department will eliminate some of the user conflict associated with this non-traditional method of taking fish.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who bow fish are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 150.025 authorizes the Department to promulgate administrative regulations to regulate creel limits and possession limits of fish, to fix open seasons, to regulate the type of any device and methods used, and areas that are open to take fish. KRS 150.440 authorized the Department to set seasons and creel limits for rough fish. KRS 150.470 authorizes the department to set size, season, and possession limits.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subse-

quent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:015. Feeding of wildlife.

RELATES TO: KRS 150.015

STATUTORY AUTHORITY: 150 025[~~(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015[~~(1)~~] requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause harm to the wildlife population if left unregulated EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Captivity" means confinement by fence or other structure or restraint intended to prevent escape.

(2) "Curtilage of the home" means the area encompassing the grounds immediately surrounding any home or group of homes used in the daily activities of domestic life, and may or may not be enclosed by a fence or other barrier, and includes areas occupied by captive cervids pursuant to 301 KAR 2.083 and wildlife held in captivity for rehabilitation purposes pursuant to 301 KAR 2.075[~~being rehabilitated~~] or held in captivity pursuant to 301 KAR [~~2.076,~~] 2:081[,] and 2.082.

(3)[~~(2)~~] "Feeding" means willingly, wantonly, or knowingly depositing, distributing, or scattering of shelled, shucked, or unshucked corn, millet, milo, safflower seed, sunflower seed, thistle, wheat, or other grain, or any manufactured feed to be consumed by wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

Section 2. Recreational Feeding of Wildlife. (1) Wildlife may be fed year round in public areas[~~municipal areas, state and local parks~~] not open to legal hunting or trapping, unless otherwise prohibited by an administrative regulation or municipal ordinance.

(2) Wildlife may be fed year round within the curtilage of the home.

(3) Wildlife shall not be fed from March 1 through May 31 except as provided in subsections (1) and (2) of this section.

(4) The prohibition established in subsection (3) of this section shall not apply to the feeding of:

(a) Fish; or

(b) Wildlife in a zoo or other facility that keeps or exhibits wildlife for public viewing.

BENJY KINMAN, Acting Deputy Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: Except for black bears as specified in 301 KAR 2:300, this administrative regulation establishes dates and other restrictions for the feeding of wildlife in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation enables law enforcement officers to more effectively enforce 301 KAR 2:140 that prohibits the use of bait for hunting turkeys. This administrative regulation also significantly lessens risks of disease outbreaks among wildlife as transmission rates are elevated at communal feeding sites.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing taking of wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by prohibiting the feeding of wildlife, specifically throughout the spring turkey season when illegal harvest over bait is prominent. This administrative regulation allows law enforcement officers to effectively discern and cite persons that hunt or harvest turkeys illegally over bait.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment strengthens the definition of "curtilage of the home" to include enclosed areas in which injured wildlife that are being rehabilitated are held in captivity.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that only wildlife held in captivity for rehabilitation purposes may be fed year-round.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any individuals that feed wildlife outside the curtilage of their home. In 2007, there were 52 licensed wildlife rehabilitation facilities operating in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons that feed wildlife outside the curtilage of their home must remove all food items from March 1 through May 31.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost associated with the implementation of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarifying that only captive-held

wildlife may be fed year-round will minimize potential disease transmission between rehabilitated and free-ranging wildlife.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase or decrease any fees.

(9) TIERING: Is tiering applied? Tiering was not used because all wild turkey hunters in Kentucky shall comply with the same hunting procedures, seasons and limits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150 025

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:030. Commercial guide license[guides].

RELATES TO: KRS 150 170[~~150 025~~], 150.175, [~~150 190,~~] 150 412

STATUTORY AUTHORITY: KRS 150 015[~~13A.350~~], 150.025, 150 190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150 015 authorizes the department to protect and conserve the wildlife of the Commonwealth. KRS 150 025 authorizes the department to promulgate administrative regulations to protect fish and game from overharvest. KRS 150 190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. This administrative regulation is necessary to establish the requirements for a commercial guide license and a guide helper.

Section 1. Definitions. (1) "Commercial guide" means a person who advertises or offers their services for remuneration to direct, instruct (excluding seminars), or aid others in taking wildlife.

(2) "Creel limit" is defined in 301 KAR 1:201.

(3) "Direct supervision" means supervision in the approximate vicinity sufficient to provide immediate medical assistance.

(4) "Guide helper" means a person without a commercial guide license who is supervised by a commercial guide while involved in the taking of wildlife.

(5) "Take" is defined in KRS 150.010(37).

(6) "Wildlife" is defined in KRS 150 010(41).

Section 2. Commercial Guide License Requirements and Application. (1) A person wanting to commercially guide for wildlife shall possess a commercial guide license provided by the department.

(2) A commercial guide license is valid for one (1) calendar year.

(3) An applicant of a commercial guide license shall:

(a) Be eighteen (18) years of age or older;

(b) Have not been convicted of any fish or game violations during the previous three (3) years;

(c) Possess all necessary fishing licenses and permits in order to receive a commercial guide license for fishing; and

(d) Possess all necessary hunting licenses and permits in order to receive a commercial guide license for hunting.

(4) An applicant wanting to apply for a commercial guide license shall submit to the department:

(a) An application for a commercial guide license to the Director's Office, Division of Law Enforcement, #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(b) A signed affidavit from two (2) separate character references documenting the applicant is experienced in the field in which they are guiding and that the applicant is of good moral character and in good physical condition;

(c) Proof of a National Crime Information Center (NCIC/LINK) background check through the Kentucky State Police;

(d) Proof of certification in cardiopulmonary resuscitation (CPR) and first aid. Certifications shall be maintained as specified by the certifying organization;

(e) Proof of completion of a boater education course when applying for a commercial guide license for fishing; and

(f) Proof of completion of a hunter education course when applying for a commercial guide license for hunting. A commercial guide applicant who guides hunters by boat shall also submit proof of completion of a boater education course.

(5) A commercial guide who has possessed a commercial guide license for the past three (3) consecutive years shall not be required to submit the two (2) character reference affidavits, as established in this Section of this administrative regulation, when applying for a commercial guide license.

(6) A commercial guide applicant who possesses a valid United States Coast Guard Captain's License ("six pack") and will guide on a United States Coast Guard regulated waterway may submit a copy of this license in lieu of the CPR, first aid, and boater education course requirements, as established in this section when applying for a commercial guide license.

Section 3. Guide Helper. (1) A commercial guide may utilize guide helpers provided they are under the direct supervision of the commercial guide, except on lands owned or leased by the commercial guide, in which case a guide helper may work beyond the

direct supervision of the commercial guide with cardiopulmonary resuscitation (CPR) and first aid certification.

(2) A fishing guide helper shall:

(a) Have in possession all necessary fishing licenses and permits; and

(b) Be accompanied in the boat by a commercial guide;

(3) A hunting guide helper shall have in possession:

(a) All necessary hunting licenses and permits;

(b) A hunter education card; and

(c) A boater education card if helping a commercial guide by boat.

Section 4. Commercial Guide License Prohibitions and Revocation (1)[~~This administrative regulation pertains to licensing of commercial guides for hunting and fishing. In accordance with KRS 150.015, this administrative regulation is necessary to insure that the commercial aspect of hunting and fishing be represented by persons who are experienced and qualified in their respective fields and are of good moral character. The function of this administrative regulation is to screen applicants to determine their fitness for commercial hunting and/or fishing guides Section 1. Where to Apply and Term of License. (1) All applications for a commercial guide's license must be made through the local Conservation Officer or Wildlife Management Area Manager, who will determine the applicant's fitness and qualifications through personal interview and investigation and certify to this in writing to the department.~~

~~(2) A commercial guide's license is valid for one (1) calendar year.~~

~~Section 2. Requirements. (1) Applicants must be eighteen (18) years of age or older.~~

~~(2) Applicants must be of good moral character, sober and in good physical condition.~~

~~(3) Applicants must be experienced in the field in which they are guiding.~~

~~Section 3. Restrictions and Prohibitions (1) Persons convicted of any game or fish violation during the past three (3) years are prohibited from obtaining a commercial guide's license, or the holder of such license convicted of any game or fish violation shall have his license revoked and will not be eligible for another commercial guide's license for a period of three (3) years.~~

~~(2)~~] No commercial guide or guide helper shall participate in the taking of fish or game [~~or fish~~] beyond the bag limit or creel limit of the person or persons being guided except that a commercial guide or guide helper may take their daily bag or creel limit of fish or game while guiding.

(2) The department shall revoke and not renew the commercial guide license, for a period of three (3) years, of a person convicted of any state or federal fish or game violation.

(3) An individual whose commercial guide license has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 5. Incorporation by Reference. (1) "Commercial Guide License Application", 07/18/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~he is guiding.~~]

BENJY KINMAN, Deputy Acting Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, Ext. 4507, fax (502) 564-9136

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a commercial guide license and a guide helper.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that a commercial guide is qualified and experienced in the field in which they are guiding and that the commercial guide is of good moral character and trained in adequate safety courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.015 authorizes the department to protect and conserve the wildlife of the Commonwealth. KRS 150.025 authorizes the department to promulgate administrative regulations to protect fish and game. KRS 150.190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.190 by establishing the additional requirements for a commercial guide license and a guide helper.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will add safety course requirements and a background check before obtaining a commercial guide license. Guide helpers will also be allowed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure that the commercial guiding aspect of sport fishing and hunting are represented by experienced and qualified people in the field they are guiding.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who commercially guide for wildlife, including fish, will be affected by this amendment. For the 2006-2007 license year, a total of 193 resident and 19 non-resident commercial guide licenses were sold.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial guides shall provide proof of a NCIC/LINK background check through Kentucky State Police, submit a signed affidavit from two separate character references, and provide proof of certification in CPR and first aid. Fishing guides shall be required to complete a boater education course. Hunting guides and guide helpers shall complete a hunter education course, as well as a boater education course, if they guide hunters by boat. Guides on a U. S. Coast Guard (U.S.C.G) regulated waterway shall provide a copy of the U.S C G Captain's License.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): There is currently a $10 fee for the NCIC/LINK background check through the Kentucky State Police. This fee is charged by the Kentucky State Police. There is no fee to attend a hunter education or boater education course and there can be a nominal fee for CPR/First Aid certification through Red Cross.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial guides and guide helpers will be more clearly informed of the requirements necessary to obtain a commercial guide license. By complying with these amendments, the commercial guide industry will be represented by people who are experienced, qualified in their respective fields, and good moral character.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: New fees were not established with this amendment.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals desiring to receive a commercial guide license were treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries, Wildlife, and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 150.015 authorizes the department to protect and conserve the wildlife of the Commonwealth. KRS 150.025 authorizes the department to promulgate administrative regulations to protect fish and game. KRS 150 190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:083. Holding and intrastate transportation of captive cervids.

RELATES TO: KRS 150.025, 150.280, 150.290, 150 725, 150.730, 150.735, 150.740

STATUTORY AUTHORITY: KRS 150 025, 150.280, 150.720, 150 735

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transportation of wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150.735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits. This administrative regulation establishes the requirements for holding and intrastate transporting cervids in Kentucky. EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Captive cervid permit" means a permit issued by the Kentucky Department of Fish and Wildlife Resources that is required to hold cervids in captivity and does not include shooting preserves as permitted under 301 KAR 2:041.

(2) "Cervid" means a member of the family Cervidae.

(3) "Commercial captive cervid permit" means a permit for propagation and taking of captive cervids by any legal hunting or slaughter methods, which allows the permit holder to sell, offer to sell, trade, or barter captive cervids, parts thereof, or products produced by captive cervids.

(4) "Flop tag" means a commercial plastic ear tag used to identify livestock.

(5) "KDFWR" means the Kentucky Department of Fish and Wildlife Resources.

(6) "Line post" means a post in a fence that is not a corner or end post.

(7) "Noncommercial captive cervid permit" means a permit to possess captive cervids that are not intended for sale, offered for sale, traded, or bartered.

Section 2. Fencing and Holding Requirements. (1)(a) An exterior fence shall be at least eight (8) feet above ground level for its entire length, and consist of twelve and one-half (12 1/2) gauge woven wire, fourteen and one-half (14 1/2) gauge high-tensile woven wire, wood planks, or chain link.

(b) A single or double strand of barbed wire strung across the top to bring the total fence height to eight (8) feet shall be acceptable.

(c) Strands of barbed wire shall not be more than six (6) inches apart and shall not be more than five (5) inches from the top of the aforementioned fencing.

(d) Spacing between vertical wires shall not exceed six and one-half (6 1/2) inches for captive deer or species whose adult size is less than 400 pounds and twelve (12) inches for captive elk or species whose adult size is 400 pounds or more.

(e) If two (2) woven wire fences are combined, one (1) above the other, the woven wire fences shall be overlapped at least six (6) inches and firmly attached to each other at intervals no greater than three (3) feet.

(f) The fence bottoms shall be installed to provide not more than three (3) inches of ground clearance.

(2) Right-of-way.

(a) The fence right-of-way shall be cleared for a distance of six (6) feet on each side.

(b) If the fence is a property boundary fence, the fence right-of-way shall be cleared for a distance of six (6) feet on the inside only.

(c) If dead timber with a height greater than the distance of the fence exists on the permittee's property, it shall be felled.

(3)(a) Fence posts shall extend a minimum of eight (8) feet above the ground and shall be of sufficient strength to maintain the fence integrity.

(b) Pine wood posts shall be treated.

(c) Posts shall be set to a minimum depth of three (3) feet.

(d) T-posts shall be installed according to manufacturers' specifications.

(4) Line posts.

(a) Wooden line posts shall be a minimum of four (4) inches in diameter and shall not be spaced more than twenty-four (24) feet apart.

(b) Steel pipeline posts shall:

1. Be a minimum of two and three-eighths (2 3/8) inches in outside diameter;

2. Weigh a minimum of three (3) pounds per foot; and

3. Not be spaced more than twenty-four (24) feet apart.

(c) Metal "T" posts shall be a minimum of one and one-quarter (1.25) pounds per foot and shall be spaced no more than twenty (20) feet apart.

(d) If the woven wire is not high tensile, there shall be a wooden or steel pipe post every sixty (60) feet.

(5) Corner and end posts.

(a) Wooden corner and end posts shall be a minimum of five (5) inches in diameter.

(b) Steel pipe corner and end posts shall be a minimum of two and seven-eighths (2 7/8) inches in outside diameter.

(c) Corner and end posts of other materials shall be of sufficient strength to maintain the fence integrity and shall be approved by the department prior to installation.

(6) Gates shall be:

(a) Substantially constructed to meet the specifications of the fence; and

(b) Equipped with at least one (1) latching and one (1) locking device.

(7)(a) Swinging water gaps and stream crossings shall be constructed to equal or exceed the standards of the fence.

(b) These crossings shall be adequate to prevent ingress and egress during high water.

(c) Permissible water gaps are as follows:

1. Swinging gates constructed to match the contour of the stream supported by cable or hinge (larger water gaps);

2. Pipe with swinging barrier (larger water gaps);

3. Pipe with fixed mesh barrier (smaller water gaps); and

4. Heavy gauge woven barrier contoured to fit the gap (smaller water gaps).

(8) If topographic, natural or other conditions exist that enable cervids to pass through, under, or over the fence, the permittee shall be required to supplement the fence with additional, stronger or higher fence posts, special grading, additional wire to increase fence height or other measures to prevent escape.

(9) Maintenance. The fence shall be maintained in a game-proof condition at all times.

Section 3. Capture and Handling Facilities. (1) Each captive facility shall have an approved handling facility or device, such as a squeeze chute or crush, which facilitates inspection, handling or capture of an individual animal.

(2) If a permittee's facility does not have the handling or capture facilities listed in subsection (1) of this section, alternatives such as dart guns, tranquilizers or other devices which immobilize an animal shall be approved by the department before being used.

Section 4. Tagging. (1) Captive cervids shall be identified in accordance with the Kentucky Department of Agriculture CWD program requirements established in 302 KAR 20:066.

(2) Captive cervids over six (6) months old shall be uniquely identified with a plastic "flop" tag in at least one (1) ear that is clearly visible and identifiable.

(3) KDFWR may approve alternatives for plastic "flop" tags for bona fide zoos, nature centers, or similar educational institutions upon written request. One (1) of the following may be substituted for ear tags or other approved forms of identification:

(a) Lip or ear tattoo;

(b) Microchip; or

(c) Branding.

Section 5. Ingress and Egress. (1) The permit holder shall be responsible for immediately capturing or destroying escaped animals upon discovering their escape.

(2) If the permit holder is unable to capture an escaped animal within forty-eight (48) hours from discovering its escape, the permit holder shall report each escape to KDFWR by telephone (1-800-858-1549).

(3) The permit holder shall then file a written report (KDFWR, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits) within ten (10) days, describing what escaped and the reason for the escape.

(4) The permit holder shall also report known ingress of wild cervids into the enclosure by filing a written report to KDFWR (KDFWR, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN. Captive Cervid Permits).

(5) The department or any peace officer may seize, capture, or destroy escaped animals or those that have ingressed if necessary.

Section 6. Space Requirements. (1) For species whose adult weight is less than 400 pounds, each individual animal shall be allowed at least 1,000 square feet of space.

(2) One (1) individual animal of a species whose adult weight is 400 pounds or more, shall require at least 1,500 square feet of space, with each additional animal requiring an additional 1,000 square feet of space.

Section 7. Prohibited Species. Except for cervids legally held prior to November 12, 2002, a captive cervid permit shall not be issued for the following:

(1) Genus Cervus spp. except Cervus elaphus nelsoni,

(2) Genus Axis spp.;

(3) Roe deer (Capreolus capreolus and Capreolus pygarus); or

(4) Hybrids thereof.

Section 8. Captive Cervid Permits. (1) Permit application and issuance. An application for a new or renewed captive cervid permit shall be processed in accordance with the provisions of KRS 150.730(2) A captive cervid permit shall be valid only for the property and facility identified in the application and that is inspected as provided in Subsection (4) of this Section. A cervid shall not be moved into a new or expanded facility until the facility has been issued a captive cervid permit by the KDFWR.

(a) Zoos and other facilities fully accredited by and in good standing with the American Zoo and Aquarium Association (AZA) shall not be required to obtain or renew a KDFWR captive cervid permit. Zoos and facilities certified but not accredited by the AZA shall be required to obtain and renew a KDFWR captive cervid permit.

(b) A commercial captive cervid permit shall be required for a facility owned or leased by persons wishing to sell, offer to sell, trade, or barter captive cervids. A person shall not sell, offer to sell, trade, or barter native cervids obtained from the wild.

(c) A noncommercial captive cervid permit shall be required for a person wishing to possess captive cervids, but who do not intend to sell, offer for sale, trade, or barter cervids.

(d) All wild cervids shall be removed from the facility prior to initial inspection.

(e) A permit shall identify the species of cervids being held.

(2) Duration.

(a) A commercial captive cervid permit shall be valid for one (1) year beginning March 1 through the last day of February, and may be renewed annually upon payment of the annual fee and proof of compliance with all applicable statutes and administrative regulations.

(b) A noncommercial captive cervid permit shall be valid for three (3) years beginning March 1 through the last day of February, and may be renewed every third year upon payment of the fee and proof of compliance with all applicable statutes and administrative regulations.

(3) Transfers. A captive cervid permit may be transferred if an existing and currently permitted facility is sold or leased to a person or entity who shall maintain and operate the facility in accordance with the provisions of KRS 150.735(3).

(a) The original captive cervid permit holder who is transferring the permit shall be compliant with all provisions of this administrative regulation prior to transfer.

(b) Prior to transfer of the permit to a new owner or lessee, the facility shall be inspected for compliance as provided by subsection (4) of this section.

(c) The purchaser or lessee of the facility shall apply for transfer of the existing captive cervid permit on a KDFWR captive cervid permit transfer application form. A copy of the deed indicating change of ownership or the lease agreement between the parties conducting the transfer shall be attached to a completed transfer application form and sent to KDFWR, #1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Captive Cervid Permits within thirty (30) days after the inspection.

(d) A transferred captive cervid permit may be renewed by the new owner or lessee completing a captive cervid permit application.

(4) Inspections.

(a) Before a captive cervid permit is issued, renewed or transferred, each facility or facility expansion shall pass an inspection that certifies it is in compliance with all applicable statutes and administrative regulations.

(b) Upon completion of a facility or facility expansion, or if a facility is to be sold or otherwise transferred, the permit applicant or holder shall notify KDFWR to request an inspection which shall be conducted within thirty (30) days of receipt of the request.

(c) Each facility shall be inspected annually after issuance of a captive cervid permit to certify and document that the facility is in compliance with this administrative regulation.

(d) A captive cervid facility inspection form shall be completed by a KDFWR law enforcement captain, who shall then forward the original copy to KDFWR Headquarters for processing.

(5) Revocation or suspension. A person identified by a KDFWR law enforcement officer as being in violation of a Kentucky statute or administrative regulation pertaining to the holding of captive cervids shall be issued a notice of violation, in the form of a certified letter from the commissioner. A person receiving a notice of violation shall have his or her permit suspended, until which time he or she comes into compliance with all applicable statutes and administrative regulations. Failure to come into compliance with all applicable statutes and administrative regulations within sixty (60) days from the date the notice of violation is received shall result in a citation being issued If convicted, his or her permit may be revoked and may cause the captive cervids to be immediately seized by the department. A person whose captive cervid permit is suspended or revoked shall not, without written approval from the department, transfer or expand the facility or sell, offer to sell, trade, transport, hunt or slaughter captive cervids which are housed in that facility.

(6) Appeal procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(7) Expansions.

(a) A facility may be expanded at any time and shall conform to the fencing specifications described in this administrative regulation.

(b) Facility expansions shall be adjacent and connected to the currently permitted facility.

(c) Cervids shall not be introduced into the expanded portion of a facility until that expansion has been inspected and approved by the Department as provided in subsection (4) of this section.

Section 9. Origin and Disposition of Captive Cervids. (1) Cervids obtained from the wild shall only be held by a wildlife rehabilitator permitted pursuant to 301 KAR 2:075.

(2) Captive cervids shall not be released into the wild except for wild-born cervids released by a permitted wildlife rehabilitator pursuant to 301 KAR 2.075.

(3) Wild-born cervids held in captivity for rehabilitation purposes shall not:

(a) Be housed in the same pen or otherwise housed in direct physical contact with cervids that were born in captivity; or

(b) Be housed in a pen that has ever housed cervids that were born in captivity.

Section 10. Transportation[~~Intrastate Movement~~] of Cervids. (1) Before a person may move a captive cervid within the state, an authorization number shall be obtained from the Kentucky Department of Agriculture pursuant to 302 KAR 20.066.

(2) A person transporting cervids shall have the authorization number issued by the Kentucky Department of Agriculture, and if applicable, the required health papers, in his or her possession while transporting cervids.

(3) A person shall not transport, import, or bring into the Commonwealth of Kentucky any cervid from a destination outside Kentucky

(a) All cervids transported, imported, or brought into Kentucky from a location outside of Kentucky shall immediately be surrendered to KDFWR for testing for disease.

(b) KDFWR shall immediately cause a cervid transported, imported, or brought into Kentucky from a location outside of Kentucky to be tested for diseases, including Chronic Wasting Disease (transmissible spongiform encephalopathy of cervids).

(c) If a cervid is found to have Chronic Wasting Disease, the person who transported, imported, or brought the cervid into Kentucky shall be responsible to KDFWR for all costs incurred in the investigation, response, and attempted eradication of the disease

Section 11. Selling Cervids. A permit holder who holds a commercial captive cervid permit may sell live cervids, parts thereof, or products produced by captive cervids, if those animals were not obtained from the wild in Kentucky.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Captive Cervid Permit Application", 7/13/06 edition;

(b) "Captive Cervid Permit Transfer Application", 7/13/06 edition; and

(c) "Captive Cervid Facility Inspection Form", 7/13/06 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BENJY KINMAN, (Acting) Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 15, 2008

FILED WITH LRC: August 29, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502)

564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation regulates the holding and transportation of cervids.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to regulate the transportation and holding of cervids in order to protect native populations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.280 authorizes the department to promulgate administrative regulations relating to propagating and holding of wildlife. KRS 150.720 authorizes the department to promulgate administrative regulations pertaining to the importation and holding of cervids, including privately-owned and farm-raised cervids. KRS 150.730 authorizes the department to issue or deny permits to hold captive cervids. KRS 150 735 authorizes the department to promulgate administrative regulations relating to the expansion of captive cervid facilities and the transfer of permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation makes it clear who may or may not possess or transport cervids.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This regulation prohibits the importation and transportation into Kentucky of cervids.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to protect native cervids from Chronic Wasting Disease. Chronic Wasting Disease has spread to fourteen states and two provinces. Once it affects cervid populations in a state, it cannot be effectively eradicated with current technology. This regulation also authorizes the testing of illegally transported cervids for Chronic Wasting Disease and other diseases.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 150.720 and 150.740 specifically authorizes the department to issue regulations reasonably contemplated to protect Kentucky's native cervid populations from disease, including regulations related to transportation and testing.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation makes it clear that no person may bring a live cervid into Kentucky and that if they do, the animal will be seized and tested for Chronic Wasting Disease and other diseases. Such clarity facilitates the ability of conservation officers to enforce the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All citizens of the Commonwealth and any person wishing to bring a cervid into Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Citizens of the Commonwealth will have to take no action. Persons wishing to bring cervids into Kentucky will have to refrain.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the citizens of the Commonwealth. There is minimal or no cost to persons wishing to bring cervids into Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cervid populations will be preserved for the citizens of the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional cost initially to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding, if needed, is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? No

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Wildlife and Law Enforcement Divisions will be affected by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150 280, 150.720, 150.735

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There will be no additional cost.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: The changes in this amendment will have negligible impact on local governments, deer hunters, and local economies, because the changes are small in scope relative to the overall deer hunting-related economic engine in Kentucky.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340,[~~150.360,~~] 150.603[~~(1) 150.620,~~]

STATUTORY AUTHORITY: KRS 150.025[~~(1)~~], 150.360[~~(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service. EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the Tounsm, Arts, and Heritage Cabinet.

Section 1. Definitions. (1) "Dove" means mourning dove and white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common moorhen, wood-

cock, common snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) A person shall not hunt a migratory game bird except on a date established in this administrative regulation.

(2) A person shall use the following time frames when hunting migratory birds:

(a) Dove beginning on:

1. September 1 for fifty-four (54) consecutive days; and

2. Thanksgiving Day for nine (9)[~~six (6)~~] consecutive days.

3. The Saturday after Christmas for seven (7) consecutive days.

(b) Woodcock beginning on the third Saturday in October for forty-five (45) consecutive days.

(c) Common snipe beginning on:

1. The third Wednesday in September for forty-seven (47) consecutive days; and

2. Thanksgiving Day for sixty (60) consecutive days.

(d) Wood duck and teal beginning on the third Wednesday in September for five (5) consecutive days.

(e) Virginia and sora rails, common moorhen and purple gallinule beginning on September 1 for seventy (70) consecutive days.

(f) Canada goose.

1. The first Saturday in September for nine (9) consecutive days;

2. Statewide except for the Ballard reporting area, and public lands in the west-central goose zone and the entire northeast goose zone which are established in 301 KAR 2:224.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the following limits:

(a) Doves:

1. Daily limit shall be fifteen (15);

2. Possession limit shall be thirty (30);

3. Eurasian collared doves may be taken in addition to mourning doves if the hunter leaves the head or wing attached while in the field.

(b) Woodcock:

1. Daily limit shall be three (3); and

2. Possession limit shall be six (6).

(c) Common snipe:

1. Daily limit shall be eight (8); and

2. Possession limit shall be sixteen (16).

(d) Virginia rails and sora rails, singly or in the aggregate:

1. Daily limit shall be twenty-five (25), and

2. Possession limit shall be twenty-five (25).

(e) Common moorhen and purple gallinules singly or in the aggregate:

1. Daily limit shall be fifteen (15); and

2. Possession limit shall be thirty (30).

(f) Wood duck and teal:

1. Daily limit shall be four (4), which shall not include more than two (2) wood ducks; and

2. Possession limit shall be eight (8), which shall not include more than four (4) wood ducks.

(g) Canada goose.

1. Daily limit two (2) birds; and

2. Possession limit four (4) birds.

(2) A person shall leave the head or one (1) fully-feathered wing attached to a migratory game bird, except a dove, being held in the field or transported.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during a time established in this section.

(1) Doves:

(a) The time between 11 a.m. and sunset during the September and October portions of the season, except if dove hunting on private land after September 1 the time between one-half (1/2) hour before sunrise and sunset; and

(b) The time between one-half (1/2) hour before sunrise and sunset during the November, December, and January segments[~~and December portions~~] of the season.

(2) Other species listed in this administrative regulation may be taken between one-half (1/2) hour before sunrise and sunset.

Section 5. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) A Wildlife Management Area owned or controlled by the department:

(a) Except as provided in this section, all provisions of this administrative regulation shall apply.

(b) A person shall not:

1. Hunt wood duck or teal on an area closed to waterfowl hunting by 301 KAR 2:222;

2. Hunt in an area marked by a sign as closed to hunting; and

3. Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on the Ballard, Boatwright, South Shore, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River, Doug Travis[~~Westvaco~~] Wildlife Management Area, Yatesville Lake Wildlife Management Area, and established Wildlife Management Area waterfowl refutes as posted by sign, shall only possess or use U.S. Fish and Wildlife Service approved nontoxic shot.

(3) Ballard Wildlife Management Area:

(a) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2:221;

(b) A person shall not hunt snipe after October 13; and

(c) A person shall not hunt woodcock.

(4) The Swan Lake Unit of Boatwright Wildlife Management Area.

(a) The body of water known as Swan Lake is closed to hunting;

(b) A person shall not hunt doves, rails, moorhens or gallinules after October 13, except as provided in 301 KAR 2:221;

(c) A person shall not hunt snipe after October 13; and

(d) A person shall not hunt woodcock.

(5) Central Kentucky Wildlife Management Area.

(a) A person shall not hunt doves after October 13, except as provided in 301 KAR 2:221;

(b) A person shall not hunt snipe after October 13, except as provided in 301 KAR 2.221;

(c) A person shall not hunt woodcock.

(6) Grayson Lake Wildlife Management Area. A person shall not hunt:

(a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;

(b) On Deer Creek Fork; or

(c) On or from the shores of Camp Webb or the state park.

(7) Land Between the Lakes. A person shall not hunt migratory game birds between the last Saturday in September and November 30.

(8) West Kentucky Wildlife Management Area. A person shall not hunt:[~~(a) Woodcock and snipe except on tracts 2, 3, 6, and 7; and~~

~~(b)~~] On a tract designated by a number followed by the letter "A".

(9) Yatesville Lake Wildlife Management Area. The Greenbrier Creek Branch of Yatesville Lake, and Yatesville Lake, including all of the islands, north of the mouth of the Greenbrier Creek Branch is closed to all waterfowl hunting.

(10) A person shall not hunt a migratory game bird on the main block of Robinson Forest.

Section 7. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for a dove hunting field on department property after considering the following:

(a) Terrain of the field;

(b) Topography of the field; and

(c) Providing for approximately forty (40) yards between hunters.

(2) A strategically located sign shall be posted in a field advising a hunter:

(a) Of the recommended hunter density; and

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

Approved by the Fish and Wildlife Commission June 13, 2008.

BENJY KINMAN, (Acting) Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: June 13, 2008

FILED WITH LRC: August 29, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the United States Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2008–09 early migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to establish hunting season dates and bag limits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation is maintaining and managing migratory game bird conservation efforts consistent with national management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is an amendment to an existing regulation. Each fall the USFWS issues a federal mandate establishing the frameworks for migratory bird hunting seasons. This amendment reflects the federal mandate regulations for migratory bird hunting under guidance of the Migratory Bird Treaty Act. Most changes are the result of calendar shift. The mourning dove season will be changed from two to three segments to accommodate 10 additional days allowed by the federal frameworks for the 2008-09 hunting period.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for migratory game birds and waterfowl.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 63,000 migratory bird hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The current changes in season dates and/or bag limits will be published in the hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt migratory game birds.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially. This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all migratory game bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations restricting the methods for the taking of wildlife.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum days and bag limits permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives may necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's migratory bird hunters.

TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.180[~~150.025(1)~~], 150.340, 150.360, 150.370[~~(1)~~], 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 150.025[~~(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025[~~(1)~~] authorizes the department to establish hunting seasons and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife. This administrative regulation is necessary to ensure the permanent and continued supply of furbearer species by protecting them from overharvest. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap not set to drown an animal upon capture.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws that close upon an animal's foot.

(4) "Furbearers" mean mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels, river otter, bobcat, coyote and striped skunk.

(5) "Hunter" means a person hunting furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Modern gun deer season" means the season established by 301 KAR 2:172.

(7) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device which is not power or spring assisted[~~(6) "Nonlocking snare" means a trap consisting of a wire, cable or string loop without a device to keep the loop from loosening~~].

(8)[~~(7)~~] "Water set" means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Raccoon and opossum:

(a) Hunting - November 1 through [~~noon~~] the last day of February. During the modern gun deer season, a raccoon or opossum hunter shall not:

1. Take raccoons or opossums during daylight hours; or

2. Carry a gun except a 22 caliber rimfire gun.

(b) Trapping - noon the third day of the modern gun deer season through [~~noon~~] the last day of February.

(2) Coyote:

(a) Hunting. year round.

(b) Trapping: noon the third day of modern gun deer season through [~~noon~~] the last day of February.

(3) Bobcat:

(a) Hunting: noon the third Saturday in November through January 31.

(b) Trapping: noon the third day of the modern gun deer season through the last day of February[~~January 31~~].

(4) All other furbearers: noon the third day of the modern gun deer season through [~~noon,~~] the last day of February.

(5) Furbearers taken by falconry: September 1 through March 30.

(6) There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; and

(b) Chasing raccoons or opossums for sport and not to kill.

(7) Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a hunting or trapping license. Statewide requirements and bag limits apply.

Section 3. Bag Limits. (1) There shall not be a bag limit on furbearers except bobcats, river otters, and those taken by falconry.

(2) A person shall not take more than five (5) bobcats per season; only three (3) bobcats may be taken with a gun.

(3) A person shall not take more than six (6) river otters per season.

(4) A falconer hunting within the falconry season but outside the dates specified in Section 2(1) through (4) of this administrative regulation shall not take more than two (2) of any furbearer.

Section 4. Legal Hours of Take. A person shall not take furbearers by hunting except during the times specified in this section.

(1) Furbearers: daylight hours only, except raccoon and opossum.

(2) Raccoon and opossum: day or night, except that a person shall not take raccoons or opossums during daylight hours during the modern gun deer season.

Section 5. Use of Calls A hunter may use a hand- or mouth-operated call, electronic call or attracting device.

Section 6. A hunter shall not possess buckshot.

Section 7. Raccoon and Opossum Restrictions. (1) A hunter shall not use a light from a boat to take raccoon or opossum.

(2) Except as specified in subsection (3) of this section, a person chasing raccoon or opossum from noon, March 1 through October 31 shall not use or carry a:

(a) Gun;

(b) Slingshot;

(c) Tree climber;

(d) Squealer; or

(e) Similar device capable of killing, injuring or forcing a raccoon or opossum from a tree or den.

(3) A person participating in a department-approved raccoon dog trial sanctioned by one (1) of the following organizations may use a squealer:

(a) The American Coon Hunters Association;

(b) The American Kennel Club/American Coon Hunters Association;

(c) The National Kennel Club;

(d) The Professional Kennel Club;

(e) The United Coon Hunters Association; and

(f) The United Kennel Club.

Section 8. Trapping Methods. (1) A person trapping on dry land shall not:

(a) Set traps closer than ten (10) feet apart; or

(b) Use a trap except a:

1. Deadfall;

2. Wire cage or box trap;

3. Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;

4. Body-gripping trap with a maximum inside jaw spread of seven and one-half (7.5) inches measured parallel with the trigger; or

5. A [~~nonlocking~~] snare

(2) There shall be no restrictions on a trap or snare used as a water set.

(3) A trap or snare shall not be set in a trail or path commonly used by a human or a domestic animal.

(4) A trapper may use lights from a boat or a vehicle.

Section 9. Harvest Recording. Immediately after taking a river otter or bobcat, a person shall:

(1) Record, in writing, the species, date taken, county where taken, and sex of the river otter or bobcat before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:

(a) Hunter's log section on the reverse side of a license or permit;

(b) Hunter's log produced in a hunting guide,

(c) Hunter's log printed from the Internet;

(d) Hunter's log available from any KDSS agent; or

(e) An index card or reasonable facsimile thereof; and

(2) Retain the completed hunter's log in his possession whenever the hunter is in the field during the current season.

Section 10. Checking a River Otter or Bobcat. (1) A person shall check a harvested river otter or bobcat by:

(a) Calling the toll free number listed in the current fall hunting and trapping guide on the day the river otter or bobcat is harvested;

(b) Providing the information requested by the automated check-in system; and

(c) Writing the confirmation number given by the system on the hunter's log described in Section 9[~~10~~] of this administrative regulation.

(2) If a harvested river otter or bobcat leaves the possession of a hunter and does not have a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag attached to it, the hunter shall attach a handmade tag, which contains the confirmation number, hunter's name, and a phone number, to the carcass.

(3) A person shall not [~~knowingly~~] provide false information when completing the hunter's log, checking a river otter or bobcat, or creating a carcass tag.

(4) A person wishing to sell a river otter or bobcat pelt to a licensed fur processor, fur buyer or for export shall call the department's toll-free information number and request a CITES tag by providing:

(a) A valid confirmation number as described in subsection (1) of this section; and

(b) A street address where the tag is to be mailed.

(5) The CITES tag shall be attached to the skin or unskinned carcass per the instructions provided and remain with the pelt until processing.

(6) Possession of an unused CITES tag is prohibited unless authorized by the department.

Section 11. Transporting and Processing River Otter or Bobcat. (1) A person shall:

(a) Have proof that a river otter or bobcat or parts brought into Kentucky were legally taken;

(b) Not sell river otter or bobcat pelts except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or other individual who commercially processes river otters and bobcats shall:

(a) Not accept river otter or bobcat carcasses or any part of a river otter or bobcat without a proper carcass tag or CITES tag described in Section 10[~~11~~] of this administrative regulation; and

(b) Keep accurate records of the hunter's name, address, confirmation or CITES tag number, and date received for each river otter or bobcat in his possession.

BENJY KINMAN, Deputy Acting Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 3 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes hunting and trapping seasons for furbearers in Kentucky. Bag limits and methods of take are also specified.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the permanent and continued supply of furbearer species by protecting them from overharvest.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to establish hunting seasons and to regulate bag and pos-

session limits, the methods of taking and the devices used to take wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025 by defining the seasons, methods of take, and bag limits for furbearers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will clarify the definition of a snare and will extend the hunting and trapping season of furbearers from noon the last day of February to the entire last day of February. This amendment will also extend the trapping season for bobcats from January 31 to the last day of February.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the definition of a snare for both trappers and law enforcement officers so that trappers understand what types of snares are permitted and officers can effectively enforce the regulation. The extension of furbearer hunting and trapping season by one half of a day will allow greater opportunity on the last day of the season. Extension of the bobcat trapping season to coincide with the end of trapping for all other furbearers will increase opportunity for trappers and remove the stipulation that trappers must release a bobcat from a trap if it is caught between January 31 and the last day of February.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Furbearer hunters and trappers will gain greater opportunity in their recreational pursuit of furbearers. There were 1,510 trapping licenses sold in 2007.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Furbearer hunters and trappers will not be required to take any additional actions to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to furbearer hunters or trappers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Furbearer hunters and trappers will benefit by having increased opportunities to hunt or trap furbearers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals who hunt or trap furbearers are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the department to establish hunting seasons and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife.

4 Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:270. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439 590, 439 640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures," September 12, 2008,[~~February 13, 2006"~~] are incorporated by reference. Probation and Parole Policies and Procedures include:

[~~27-01-01 Probation and Parole Procedures (Added 1/12/05)~~
~~27-02-01 Duties of Probation and Parole Officers (Added 1/12/05)~~
~~27-02-02 Probation and Parole Officers Telecommuting Program (Added 1/12/05)~~
~~27-03-01 Workload Formula (Added 1/12/05)~~
~~27-05-01 Testimony, Court Demeanor and Availability of~~

~~Legal Services (Added 1/12/05)~~]
27-06-02 Equal Access to Services (Added 1/12/05)
27-07-01 Cooperation with Law Enforcement Agencies (Added 1/12/05)
27-08-01 Use of Force and Critical Incident Reporting (Amended 9/12/08)[~~(Added 4/12/05)~~]
27-09-01 Kentucky Community Resources Directory (Added 1/12/05)
27-10-01 Pretrial Diversion (Amended 4/12/05)
27-11-01 Citizen Complaints (Amended 2/13/06)
27-11-02 Staff-Offender Interaction (Added 9/12/08)
27-12-01 [~~Supervision:~~] ,Case Classification (Amended 9/12/08[~~Added 1/12/05~~])
27-12-02 Risk Scale Assessment (Amended 4/12/05)
27-12-03 Initial Interview (Added 1/12/05)
27-12-04 Conditions of Supervision Document and Request for Modification (Added 1/12/05)
27-12-05 Releasee's Report Document (Added 1/12/05)
27-12-06 Grievance Procedures for Offenders (Added 1/12/05)
27-12-08 Supervision Planning (Amended 4/12/05)
27-12-11 Guidelines for Monitoring Financial Obligations (Amended 4/12/05)
27-12-13 Community Service Work (Added 1/12/05)
27-12-14 Offender Travel (Amended 9/12/08[~~4/12/05~~])
27-13-01 Drug and Alcohol Testing of Offenders (Amended 4/12/05)
27-14-01 Interstate Compact (Amended 4/12/05)
27-15-01 Supervision Reporting Documents, Violations and Unusual Incidents (Added 1/12/05)
27-16-01 Search, Seizure, and Processing of Evidence[~~Search; Seizure; Chain of Custody; Disposal of Evidence~~] (Amended 9/12/08[~~4/12/05~~])
27-17-01 Absconder Procedures (Amended 4/12/05)
27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 4/12/05)
27-19-01 Preliminary Revocation Hearing (Amended 4/12/05)
27-20-02 Prisoner Intake Notification (Added 1/12/05)
27-20-03 Prisoner Status Change (Added 1/12/05)
27-21-01 Apprehension of Probation and Parole Violators[~~Offenders~~] (Amended 9/12/08[~~4/12/05~~])
27-23-01 In-state Transfer (Added 1/12/05)
27-24-01 Releasing Offender from Active Supervision (Added 1/12/05)
27-24-02 Reinstatement of Offenders to Active Supervision (Added 1/12/05)
27-26-01 Assistance to Former Offenders and Dischargees (Amended 2/13/06)
27-30-01 Sex Offender Registration (Amended 9/12/08[~~2/13/06~~])
27-30-02 Sex Offender Supervision (Amended 9/12/08)[~~Conditional Discharge of Sex Offenders (Added 1/12/05)~~
~~27-30-03 Supervision Sex Offenders (Added 1/12/05)~~
~~27-31-01 Use of Chemical Agents in Probation and Parole (Added 1/12/05)~~
~~27-31-02 Critical Incident Reporting (Added 1/12/05)~~]
27-32-01 Student Intern Program (Amended 12/14/05)
27-32-02 Community Based Volunteer Citizen Involvement (Amended 2/13/06)
28-01-01 Probation and Parole Investigation Reports, Introduction, Definitions, Confidentiality, Timing, and General Comments (Amended 4/12/05)
28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Added 1/12/05)
28-01-03 Presentence, Postsentence, Supplemental and Partial Investigations (Added 1/12/05)
28-01-08 Probation and Parole Investigation Reports, Partial Investigation Reports and Submissions Schedule (Amended 4/12/05)
28-01-09 Release of Information of Factual Content on Presentence or Postsentence Investigation Documents (Added 1/12/05)
28-03-01 Parole Planning, Investigation request, halfway houses, Parole Officer to monitor employment search and sponsorship (Amended 4/12/05)
28-03-02 Expedient Release Parole Planning Investigative request (Added 1/12/05)
28-04-01 Furlough Verifications (Added 1/12/05)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [~~Office of Legal Services,~~] Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686,[~~Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, (502) 564-2024, fax (502) 564-6494,~~] Monday through Friday, 8 a.m. to 4.30 p.m.

LADONNA THOMPSON, Commissioner
APPROVED BY AGENCY: September 10, 2008
FILED WITH LRC: September 12, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 21, 2008 at 9 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business October 31, 2008 to:

CONTACT PERSON: Amy Barker, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Woodward

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections that chiefly pertain to probation and parole issues.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, Chapter 439, and to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections, Division of Probation and Parole.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their rights and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment brings the Kentucky Department of Corrections into compliance with ACA Standards and updates current practices for the department.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and Chapter 439.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to en-

sure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the current procedures for the Division of Probation and Parole.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections' 675 probation and parole employees and approximately 40,000 probationers and parolees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Changes to this regulation are not expected to increase costs from what is budgeted to the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the Division of Probation and Parole.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: none

(b) On a continuing basis: none

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in funding to the department is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of Kentucky Department of Corrections and the Division of Probation and Parole.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, Chapter 439.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

c. How much will it cost to administer this program for the first year? No new programs are created. The amendments to this regulation impact how the Kentucky Department of Corrections and the Division of Probation and Parole operate, but do not increase costs from what was previously budgeted to the Department of Corrections.

d. How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and the Division of Probation and Parole operate, but are not expected to increase costs from what will be budgeted to the Department of Corrections.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund, and for maintenance of basic training records

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

(1) Successfully complete a minimum of 768[~~764~~] hours of training, based upon the curriculum approved by the council in accordance with KRS 15.330 and 503 KAR 1.090;

(2) Attain a seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A recruit who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training;

(3) Pass all training areas covered during the course for which a pass or fail designation is assigned. A recruit who does not pass all pass or fail training areas shall be considered to have failed basic training; and

(4) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section.

(1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the recruit's body weight;

2. Eighteen (18) sit-ups in one (1) minute;

3. 300 meter run in sixty-five (65) seconds;

4. Twenty (20) pushups; and

5. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds.

(b) If a recruit passes all events when participating in the physical training entry test, he shall have met the physical training entry requirements

(c) Retest. If a recruit fails to pass all events when participating in the physical training entry test:

1. He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test;

2. All failed events shall be retested on the same date;

3. If the recruit passes all previously failed events on the date of the retest, he shall have met the physical training entry requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, he shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) Within five (5) days from the final date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. One (1) repetition maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;

2. Eighteen (18) sit ups in one (1) minute;

3. 300 meter run in sixty-five (65) seconds;

4. Twenty-five (25) push ups; and

5. One and five-tenths (1.5) mile run in sixteen (16) minutes fifteen (15) seconds.

(b) If a recruit passes all events when participating in the physical training graduation test, he shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. He shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

2. All failed events shall be retested on the same date;

3. If the recruit passes all previously failed events on the date of the retest, he shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, he shall be considered to have failed basic training.

(3) Physical training midpoint test. During week nine (9) of basic training, the recruits shall be administered the events of the physical training requirements for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Failure and Repetition of Basic Training. (1) Failure of Training.

(a) A recruit that is removed from basic training due to a training segment or area failure prior to the successful completion of DUI Detection[~~before reaching the beginning of week nine (9)~~] shall:

1. Be required to repeat the entire basic training course; and

2. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3.030.

(b) If a recruit fails a segment or area after the completion of DUI Detection he or she shall:

1.[~~basic training in week nine (9) through week eighteen (18):~~

~~1. He or she shall:~~

~~a.~~] Be removed from the basic training class;

2.[~~b.~~] Reenter basic training in a subsequent class that has the first available vacancy; and

3.[~~c.~~] Start his or her training at the beginning of the training area or segment[~~module~~] that the recruit did not successfully complete.

(c) If a recruit fails the Practical Examination I, Practical Examination II, or Academic Examination 5: Final Exam, the recruit shall reenter basic training at the conclusion of DUI Detection

(d) Upon his or her return, the recruit shall attend and participate in the area or segment, but shall not be retested in the training area or segment that was previously passed.

1.[~~was in at the time of the failure;~~

~~2.~~] In accordance with Section 6(2) of 503 KAR 3.030, the recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training area[~~module~~] which was failed. The hiring agency may recover these costs of repeating the training area[~~module~~] from its recruit; and

2.[~~3.~~] If the training area[~~module~~] is successfully completed, the recruit shall continue with the remainder of the basic training course.

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:

(a) Shall not graduate with his or her basic training class;

(b) Shall be permitted to retest with the very next basic training class; and

(c) Upon successful completion may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and

(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030

Section 4. Basic Training Curriculum. The[~~Modules. (1)~~] Basic training curriculum shall include[~~be divided into fourteen (14) different training areas on~~] the following subjects:

(1)[~~(a)~~] Administration and testing;

(2)[~~(b)~~] Telecommunications (MDT);

(3)[~~(c)~~] Legal subjects;

(4)[~~(d)~~] Physical training;

(5)[~~(e)~~] Defensive tactics;

(6)[~~(f)~~] Patrol;

(7)[~~(g)~~] Vehicle operations;

(8)[~~(h)~~] Firearms;

(9)[~~(i)~~] Criminal investigation;

(10)[~~(j)~~] D.U.I./Field sobriety testing;

(11)[~~(k)~~] Breath testing;

(12)[~~(l)~~] Modular evaluation/testing;

(13)[~~(m)~~] First Aid/C.P.R./A.E.D.;

(14)[~~(n)~~] Homeland security.

[~~(2) Basic training shall be divided into five (5) tested areas/modules:~~

~~(a) I.;~~

~~(b) II.;~~

~~(c) III.;~~

~~(d) IV.;~~

~~(e) V.; and~~

~~(f) VI.~~

~~(3) If a recruit is unable to complete basic training, but legally entitled to complete the unfinished tested modules of the course, the recruit shall restart at the beginning of the module which he or she was in when the recruit left basic training.~~]

Section 5. Examinations. (1) A recruit shall be examined in the following segments and six (6) areas of basic training:

(a) Area I, composed of the following:

1. Academic Examination 1 segment;

2. Academic Examination 1 (Segment 2);

3. Academic Examination 1 (Segment 3);

4. Academic Examination 1 (Segment 4);

5. Academic Examination 1 (Segment 5);[~~: Five (5) academic tests;~~]

(b) Area II:

1. Firearms, including:

a. Day handgun;

b. Night handgun;

c. Day Shotgun; and

d. Low-light shotgun qualification;

2. Performance driving evaluation, practical; and

3. Defensive tactics[~~, which beginning with Class #324~~] shall include a:

a. Practical[~~Skills~~] test; and

b. Written[~~Pressure Point Control Tactics Management System (PPCT) written~~] certification test;

(c) Area III.

1. Breath test segment, including:

a. Practical examination; and

b. Written examination; and
2. DUI detection segment, including:
a. Practical examination; and
b. Written examination;
(d) Area IV: American Red Cross certification in the following:
1. Professional rescuer CPR-automated external defibrillation segment; and
2. First aid segment;
(e) Area V: Mobile Data Terminal Certification segment; and
(f) Area VI: Practical exams.
1. Practical Examination I[~~Patrol practical exam~~]; and
2. Practical Examination II[~~Investigations practical exam~~].
(2) A recruit shall be permitted one (1) reexamination in each of the six (6) areas of basic training.
(3) A recruit who fails an examination, other than defensive tactics or the Practical Examinations[~~patrol and investigations practical exams~~], shall not be reexamined:
(a) Earlier than forty-eight (48) hours from the original examination; or
(b) Later than:
1. Ten (10) days after the original examination. A recruit may submit a written request to the branch manager for an additional five (5) days in which to take the reexamination; and
2 The last scheduled day of the basic training course.
(4) Failure of a defensive tactics examination or Practical Examination II.
(a) If the failure occurs prior to the last scheduled day of defensive tactics training, the recruit shall not be reexamined earlier than the last scheduled day of defensive tactics training.
(b) If the failure occurs on the last scheduled day of defensive tactics training, the recruit shall not be reexamined:
1. Earlier than twenty-four (24) hours from the original examination; or
2. Later than the last scheduled day of the basic training course.
(c) If a recruit fails Practical Examination II, the recruit may be reexamined:
1. Immediately; or
2. No later than the last scheduled day of the basic training course
(5) A recruit shall be considered to have failed basic training if the recruit:
(a) Fails a reexamination in accordance with subsection (2) of this section; or
(b) Fails two (2) examinations in the same area of basic training.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.
(2) An excused absence from the course which causes a recruit to miss any of the 768[~~754~~] hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the
(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and
(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.
(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished areas of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal and he is unable to complete the course, he shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:
(1) The break in employment exceeds one (1) year; or
(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall, for each recruit who completes the course, complete and send the following forms to the council:
(a) DOCJT Form 68-1 (Application for Training Credit);
(b) DOCJT Form 29-1 (Agency Requests for Training); and
(c) DOCJT Form 29-1PA (Agency Requests for Training - Pay Agency Form).
(2) The department shall send a copy of the DOCJT Form 68-1 to the:
(a) Council for verification; and
(b) DOCJT Records Section Supervisor.
(3) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.
(4) All training records shall be.
(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and
(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DOCJT Form 68-1 - Application for Training Credit", 8/22/02
(b) "DOCJT Form 29-1 - Agency Requests for Training", 10/20/06, and
(c) "DOCJT Form 29-1PA - Agency Requests for Training - Pay Agency Form", 7/12/06.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4.30 p.m.

WILLIAM F. WALSH, Ph.D., Chair
APPROVED BY AGENCY: September 5, 2008
FILED WITH LRC: September 5, 2008 at 2 p m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008 at 9 a.m. at the Department of Criminal Justice Training, Room 211, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by October 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn
(1) Provide a brief summary of.

(a) What this administrative regulation does: Establishes the curriculum and training requirements for those attending the Department of Criminal Justice Training Law Enforcement Basic Training academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to approve law enforcement officers as having met the requirements for completion of law enforcement training, specifically basic training which is necessary for participation in the Kentucky Law Enforcement Foundation Program Fund (KLEFPF), and peace officer certification pursuant to KRS 15.380 through 15.404.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and KRS 15.990 to 15.992. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310, and 15.380 through 15.402).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve active peace officer certification, or participate in KLEFPF.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment increases the amount of training from 754 hours to 768 hours, although this increase will still be contained within an eighteen week period of time. Additionally, it reorganizes the training and testing requirements.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update training subjects and testing in basic training.

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) herein.

(d) How the amendment will assist in the effective administration of the statutes: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for law enforcement training courses and certify law enforcement officers as having met all training requirements. These amendments will assist the KLEC in certifying officers who have the most modern and up-to-date training in the nation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that utilize DOCJT basic training, which is approximately 400 agencies, including most state, county and local agencies, but excluding the Kentucky State Police, and the Lexington, Louisville and Jefferson County Police Departments.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The agencies should not experience any detrimental impact. They should be benefited by receiving an officer-graduate who is better trained.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each law enforcement agency is responsible for the payment of wages and benefits while its recruit completes law enforcement basic training. Depending on whether a recruit is paid a salary or hourly wage, an agency may be required to pay overtime or compensatory time for time spent in training over forty hours per week. The cost of tuition, room, and board will continue to be provided by DOCJT without charge to the agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better trained officer upon graduation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There should not be any new costs above that currently incurred to administer the law enforcement basic training.

(b) On a continuing basis: This cost should remain the same for recruits attending the academy in the future.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect city and county police departments, sheriffs' offices, Kentucky Vehicle Enforcement Officers and other state agencies whose enforcement officers must be a certified police officer. New city, county, and state law enforcement are required to attend law enforcement basic training and abide by all disciplinary rules.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(a) and (h), and KRS 15.380.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures cannot be estimated since costs will depend on the initial size of the law enforcement agencies and the number of new officers that they employ regularly. The current overall length of law enforcement basic training is eighteen weeks. While police recruits are at Richmond participating in DOCJT basic training, they are paid a salary from their employing agency. The proposed amendment to 503 KAR 1:110 will ultimately increase basic training from 754 hours to 768 hours. Depending on whether a recruit is paid a salary or hourly wage, an agency may be required to pay overtime or compensatory time for time spent in training over forty hours per week. The cost of tuition, room, and board will continue to be provided by DOCJT without charge to the agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? Additional funds over that which the Department of Criminal Justice Training currently spends to administer the law enforcement basic training program should be minimal at most. It costs the Department of Criminal Justice Training approximately $1,520 per week per recruit. The additional hours added to the curriculum will still be contained within the current 18 weeks of training.

(d) How much will it cost to administer this program for subsequent years? Costs are expected to be about the same as in the first year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: Please see responses to questions 4 above.

TRANSPORTATION CABINET
Motor Vehicle Commission
(Amendment)

605 KAR 1:060. Temporary off-site sale or display event.

RELATES TO: KRS 186A.220(5), 190.030(7), (11), 190.035

STATUTORY AUTHORITY: KRS 190.020, 190.030(1), 190.047, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030(7) requires a motor vehicle dealer to restrict the sale or display of motor vehicles to the location of the dealer's licensed place of business except that a motor vehicle dealer may have a temporary off-site sale or display of motor vehicles at a location other than the licensed place of business under certain conditions. KRS 190.030(1) authorizes the Motor Vehicle Commission to provide by administrative regulation for "other licensee activities and an appropriate fee therefore". This administrative regulation establishes the application requirements for holding a temporary sale or display event.

Section 1. Definition. "Display" means a showing of a motor vehicle or vehicles with an intent to attract or further a sale of the motor vehicle or vehicles or similar motor vehicles offered by a motor vehicle dealer at a location in this state where no sale, transfer, or test drive takes place. Any showing of a motor vehicle at a location for more than forty-eight (48) hours shall be deemed to be a showing with an intent to attract or further a sale of the motor vehicle or vehicles or similar motor vehicles offered by a motor vehicle dealer and shall require a permit.

Section 2. (1) A motor vehicle dealer shall not conduct or participate in a motor vehicle [~~sale or~~] display event at any location other than the dealer's licensed place of business unless an Application for a Temporary [~~Sale or~~] Display Event is filed with the Motor Vehicle Commission and approved.

(2) The application for a Temporary Display Event shall be received a minimum of five (5) days prior to the next regularly-scheduled meeting of the commission held before the requested permit period.

(3) The temporary [~~sale or~~] display permit application shall state:

(a) The duration of the display[~~its validity~~] which shall not exceed[~~:~~

~~1.~~] sixty (60) successive days [~~for a motor vehicle display; or~~

~~2. Five (5) successive days for a motor vehicle sale~~];

(b) The specific location of the temporary [~~sale or~~] display event for which the permit is requested;

(c) A complete list of all motor vehicle dealers participating in the temporary display event;

(d) Proof that the city, county, urban county or consolidated local government where the temporary [~~sale or~~] display event is to occur has enacted an ordinance specifically allowing a motor vehicle dealer to conduct a motor vehicle temporary [~~sale or~~] display event in its jurisdiction at a location other than the dealer's licensed place of business,

(4) No salesman shall be present at a temporary display event at any time. If a salesman of the participating motor vehicle dealer is present at the temporary display event, such an event shall be deemed a temporary sale event.

(5) The dealership name as stated on its license, the address of its established place of business and contact information shall be placed on or near the vehicle or vehicles on display.

Section 3. (1) A motor vehicle dealer shall not conduct or participate in a motor vehicle sale event at any location other than the dealer's licensed place of business unless an Application for a Temporary Sale Event is filed with the Motor Vehicle Commission and approved.

(2) The application for a Temporary Sale Event shall be received a minimum of forty-five (45) days prior to the temporary sale event.

(3) The temporary sale event application shall state:

(a) The duration of the sale which shall not exceed five (5) successive days,

(b) The specific location of the temporary sale event for which the permit is requested;

(c) A complete list of all motor vehicle dealers participating in the temporary sale event;

(d) Proof that the city, county, urban county or consolidated local government where the temporary sale event is to occur has enacted an ordinance specifically allowing a motor vehicle dealer to conduct a motor vehicle temporary sale event in its jurisdiction at a location other than the dealer's licensed place of business;

(e) That the temporary sale event has been, is being, or will be advertised as being temporary in nature;

(f) That the temporary sale event shall include a representative sampling of the inventory of the participating dealer or dealers; and

(g) In the case of a sale of new motor vehicles:

1. That the sale location is not within a five (5) mile radius of the licensed location of a nonparticipating new motor vehicle dealer licensed to sell the same line make of motor vehicles as will be displayed at the temporary sale event; and

2. That the applicable franchisor or franchisors have approved or consented to the temporary sale event if such consent is required.

Section 4. At every temporary sale event each participating dealer shall display a sign easily visible from the street identifying his business using his business name as stated on his dealer's license and indicating the address of his established place of business as set forth in his dealer's license. In the event that applicable local ordinance prohibits such signage, each dealer shall display allowable signage containing the same information and provide customers with business cards containing the information upon request.

Section 5. All sales made at a temporary sale event shall be evidenced by a written sales document or purchase order containing the dealership's licensed name and address of the dealership's established place of business, the address of the temporary sale and the customer name, address and telephone number. Such documentation must be retained for six (6) months after the sale and must be made available to the Motor Vehicle Commission upon request.

Section 6. A certificate of title, and other documents if appropriate, shall be present at the temporary sale event location with respect to each motor vehicle offered for sale at the temporary sale event and must be made available to purchasers as set forth in KRS 186.220(5).

Section 7. (1) All individuals involved in attempting to make a sale as defined in KRS 190.010(25) at a temporary sale event shall possess a valid salesman's license issued by the Motor Vehicle Commission in the name of the participating dealer or dealers prior to the date of the temporary sale event.

(2) All salesmen participating in or present at a temporary sale event shall have their valid Kentucky license in their possession and available for display at all times during the event.

Section 8. No temporary sale event involving new motor vehicles shall be allowed within a five (5) mile radius of the licensed location of a nonparticipating new motor vehicle dealer licensed to sell the same line make as will be displayed at the temporary sale event.

Section 9 Unless good cause is shown by the applicant, temporary display events will not be approved for the same location or the same jurisdiction unless there is at least a twenty-four (24) hour period between the end of the last temporary display event held by the applicant and the beginning of the next temporary display event to be held by the applicant. Unless good cause is shown by the applicant, temporary sale events will not be approved for the same location or the same jurisdiction unless there is at least a thirty (30) day period between the end of the last temporary sale event held by the applicant and the beginning of the next temporary sale event to be held by the applicant[~~,~~

~~(d) That the temporary sale event has been, is being, or will be advertised as being temporary in nature; and~~

~~(e) That the temporary sale event shall include a representative sampling of the inventory of the participating dealer or dealers~~]

Section 10 [~~3~~] (1) The fee for a temporary sale event permit shall be $500[~~$100~~] per participating dealer and shall be paid at the time the application is submitted.

(2) If the application is only for a temporary display event, the fee shall be twenty-five (25) dollars[~~a fee shall not be required~~].

Section 11 [~~4.~~] Incorporation by Reference. (1) "Application for Temporary Sale or Display Event," revised September 2008[~~March 2004~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1,[~~403 Wapping Street,~~] Frankfort, Kentucky 40601[~~40622~~].

RAY COTRELL, Chairman

APPROVED BY AGENCY: September 9, 2008

FILED WITH LRC: September 10, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008 at 9 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Training Room C109-A, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If you have a disability for which the Motor Vehicle Commission needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 573-1003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Carlos R. Cassady, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for dealers wishing to hold a temporary sale or display event.

(b) The necessity of this administrative regulation: KRS 190.030(7) requires a motor vehicle dealer to restrict the sale or display of motor vehicles to the location of the dealer's licensed place of business except that a motor vehicle dealer may have a temporary off-site sale or display of motor vehicles at a location other than the licensed place of business under certain conditions. This regulation is necessary to set forth the applicable conditions for a temporary off-site display or sale and the application procedure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the standard to be met by applicants and licensed motor vehicle dealers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the requirements for applicants who wish to have temporary sales or displays at locations other than the licensed place of business.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change the existing administrative regulation. The amendment will change the existing regulation by changing the time period for the submission of applications for off-site sales, clarifying certain restrictions on off-site sales and by clarifying that certain requirements which apply to a dealer's permanent location also apply to off-site sales. The regulation also simplifies the procedures for off-site displays and changes the fees for both applications.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify certain issues which licensees have contended were ambiguous and to update application procedures in response to increased costs associated with approval and supervision of off-site sales and displays.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by clarifying the application process and providing dealers with guidance as to how they can apply the statutory provisions regarding their licensed place of business to activities at off-site locations.

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist the effect of administration of the statutes by providing for additional time and resources to consider applications and to verify that the application requirements have been met.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all licensed motor vehicle dealers who wish to participate in off-site sale or display events. In 2008 there were approximately 3,600 licensed motor vehicle dealers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will require motor vehicle dealers wishing to participate in an off-site sale or display event to submit a written application along with certain documentation and the required fee in order to conduct such sales. The amendment to the regulation will result in only minor changes to the current procedure which requires an application, supporting documentation and the payment of a fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as it will vary depending on the proposed scope and size of the operations of each applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to participate in off-site sale or display events.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional costs.

(b) On a continuing basis: There are on-going costs related to administration of off-site sales and displays and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The proposed amendments to the regulations increase the fees for temporary sale or display events. This increase is required to meet the increased demands regarding more frequent and varied off-site sale and display events. The commission does not anticipate that any further increase or funding will be necessary to implement the regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation increases the fee for both temporary sale events and temporary display events.

(9) TIERING: Is tiering applied? No, tiering is not applied because all motor vehicle dealers affected by this regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.020, 190.030, 190.047, 190.073.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Regulation will generate between $25 and $500 per application, however the number of applications to be received is unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Regulation will generate between $25 and $500 per application, however the number of applications to be received is unknown.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TRANSPORTATION CABINET
Motor Vehicle Commission
(Amendment)

605 KAR 1:170. Temporary sale or display event license for a motor vehicle dealer trade association.

RELATES TO: 190.010-190.990
STATUTORY AUTHORITY: 190.020, 190.030(1), 190.073
NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 authorizes the Motor Vehicle Commission to provide by administrative regulation for "other licensee activities and an appropriate fee therefore." 605 KAR 1:150 provides for a temporary sale location permit. Kentucky is the location of several major regional vehicle association trade shows and sales each year. This administrative regulation addresses the participation of foreign members of an association in an association sponsored sale or display located within the same metropolitan statistical area as the association.

Section 1. "Metropolitan statistical area" means a specific geographic area as defined by the United States Department of Commerce, Bureau of the Census, and shown in Kentucky Commerce Cabinet 1987 Kentucky Economic Statistics, page 88, or updated editions thereof, said publication being adopted by reference herein. All documents incorporated by reference herein are on file for public inspection at the office of the Motor Vehicle Commission, 105 Sea Hero Road, Suite 1[~~114 West Clinton Street~~], Frankfort, Kentucky 40601.

Section 2. No trade association of motor vehicle dealers may sponsor a display or sale of motor vehicles at any location unless an application for a temporary sale or display permit is made in compliance with 605 KAR 1:060 on forms provided by the licensor and filed with the licensor a minimum of forty-five (45)[~~five (5)~~] days prior to the next regularly scheduled meeting of the licensor before the requested permit period. The permit shall state the duration of its validity which in no event shall exceed five (5) successive days, the location for which it is issued, the name of the sponsoring association, and the names of the participating dealers.

Section 3. A permit sought by a trade association of motor vehicle dealers shall authorize its membership's participation in a sale or display activity only at a location within the same metropolitan statistical area as the association, within this state.

Section 4. The fee for a temporary sale event permit shall be $500[~~$100~~] per participating dealer.

RAY COTRELL, Chairman
APPROVED BY AGENCY: September 9, 2008
FILED WITH LRC: September 10, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008 at 9 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Training Room C109-A, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing of their intent to attend. If you have a disability for which the Motor Vehicle Commission needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carlos R. Cassady, Executive Director, Kentucky Motor Vehicle Commission, 105 Sea Hero Road, Suite 1, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 573-1003.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carlos R. Cassady, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for motor vehicle dealer trade associations wishing to hold a temporary sale event.

(b) The necessity of this administrative regulation: KRS 190.030(7) requires a motor vehicle dealer to restrict the sale or display of motor vehicles to the location of the dealer's licensed

place of business except that a motor vehicle dealer may have a temporary off-site sale or display of motor vehicles at a location other than the licensed place of business under certain conditions. This regulation is necessary to set forth the applicable conditions for a temporary off-site sale by an association of such dealers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the standard to be met by applicants and licensed motor vehicle dealers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This regulation establishes the requirements for motor vehicle dealer trade associations that wish to sponsor temporary sales at locations other than the members' licensed places of business.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change the existing administrative regulation: The amendment will change the existing regulation by changing the time period for the submission of applications for off-site sales and changes the fee.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform the section with changes to 605 KAR 1:060.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by clarifying the application process and providing dealers with guidance as to how they can apply the statutory provisions regarding their licensed place of business to activities at off-site locations.

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist the effect of administration of the statutes by providing for additional time and resources to consider applications and to verify that the application requirements have been met.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all licensed motor vehicle dealers who wish to participate in off-site sale events. In 2008 there were approximately 3,600 licensed motor vehicle dealers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will require motor vehicle dealers wishing to participate in an off-site sale or display event to submit a written application along with certain documentation and the required fee in order to conduct such sales. The amendment to the regulation will result in only minor changes to the current procedure which requires an application, supporting documentation and the payment of a fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as it will vary depending on the proposed scope and size of the operations of each applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to participate in off-site sale events.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional costs.

(b) On a continuing basis: There are on-going costs related to administration of off-site sales and displays and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The proposed amendments to the regulations increase the fees for temporary sale or display events. This increase is required to meet the increased demands regarding more frequent and varied off-site sale events. The Commission does not anticipate that any further increase or funding will be necessary to implement the regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation increases the fee for temporary sale events.

(9) TIERING: Is tiering applied? No, tiering is not applied because all motor vehicle dealers affected by this regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.020, 190.030, 190.047, 190.073

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Regulation will generate $500 per participant per application, however the number of participants and applications to be received is unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Regulation will generate at least $500 per application, however the number of applications to be received is unknown.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:180. Recordkeeping; reporting; statistics.

RELATES TO: KRS 338.121(3), 338.161, 29 C.F.R. Part 1904
STATUTORY AUTHORITY: KRS 338.061, 338.161
NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-472, effective June 16, 2008, established the Labor Cabinet and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were as-

signed to the Department of Workplace Standards. Within the Department of Workplace Standards, a Division of Occupational Safety and Health Compliance and a Division of Occupational Safety and Health Education and Training were created. KRS 338.161(1) requires the Office of Occupational Safety and Health, represented by the Executive Director to promulgate administrative regulations requiring employers to report their occupational safety and health statistics. 29 C.F.R. Part 1904 establishes the federal requirements for the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recordkeeping and reporting requirements for employers covered under KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue[,] is removed.

(2) "Employee" is defined by KRS 338 015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Occupational Safety and Health Act" means KRS Chapter 338.

(5) "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet. [~~Commissioner of the Department of Labor, Environmental and Public Protection Cabinet~~]

(6) "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. Employers shall comply with the requirements for reporting and recording of occupational injuries and illnesses established at 29 C.F.R. Part 1904, revised as of July 1, 2008[~~2005~~], as amended by the definitions in Section 1 of this administrative regulation and the requirements in Section 3 of this administrative regulation.

Section 3. Reporting Fatalities, Amputations, or In-Patient Hospitalizations. (1) Employers shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance,[~~Department of Labor, Office of Occupational Safety and Health, Division of Compliance,~~] at (502) 564-3070, any work-related incident which results in the following:

(a) The death of any employee; or

(b) The hospitalization of three (3) or more employees.

(2) The report required under subsection (1) of this section shall be made within eight (8) hours from when the incident is reported to the employer, the employer's agent, or another employee. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

(3) Employers[~~Effective November 1, 2006, through December 31, 2008, employers~~] shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance,[~~Department of Labor, Office of Occupational Safety and Health, Division of Compliance,~~] at (502) 564-3070, any work-related incident which results in the following:

(a) An amputation suffered by an employee; or

(b) The hospitalization of fewer than three (3) employees within seventy-two (72) hours following the incident.

(4) The report required under subsection (3) of this section shall be made within seventy-two (72) hours from when the incident is reported to the employer, the employer's agent, or another employee.

J.R. GRAY, Secretary

APPROVED BY AGENCY: September 4, 2008

FILED WITH LRC: September 5, 2008 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2008, at 10.30 a.m. (EDT) at the Kentucky Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David Stumbo, Health Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3291.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Stumbo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the requirements for the collection of occupational safety and health injury and illness data, and for the notification by employers of the Division of Occupational Safety and Health Compliance regarding work-related fatalities, amputations, and in-patient hospitalizations experienced by their employees. Also, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: This amendment does not set forth any new requirements. 29 C.F.R. Part 1953 requires Kentucky's Occupational Safety and Health Program to be at least as effective as that conducted by the Occupational Safety and Health Administration. Section 1 of this administrative regulation provides definitions for the administrative regulation. Section 2 meets the federal mandate by requiring that employers covered by KRS 338 comply with 29 C.F.R. Part 1904, for collecting workplace illness and injury data. Section 3(1) of this administrative regulation meets the mandate of 29 C.F.R. Part 1904 39, by requiring that employers report work-related incidents resulting in fatalities and catastrophes, defined as the in-patient hospitalization of three or more employees as a result of single incident. Section 3(2) requires that these reports be made within 8 hours from when the incident is reported to the employer, employer's agent, or another employee. Section 3(3) of this administrative regulation carries two state-specific requirements. Section 3(3)(a) requires that employers report all work-related amputations. Section 3(3)(b) requires that employers report all work-related hospitalizations of one or two employees, if the hospitalization occurs within 72 hours of the incident. Section 3(4) requires that reports under Section 3(3)(a) and (b) be made within 72 hours following the incident. The provisions in Section 3(3) are of high value to the Division of Occupational Safety and Health Compliance because they ensure that vital information is made available quickly to the agency regarding the number and nature of workplace amputations, injuries, and illnesses suffered by Kentucky's employees. When the agency receives a notification of a workplace amputation or hospitalization required by Section 3 of this amended administrative regulation, it may initiate an inspection of the worksite involved to determine if a violation of Kentucky's occupational safety and health regulations or statutes has occurred. The agency considers these types of inspections to be an optimum use of its resources, especially compared to randomly selected worksite inspections. Random inspections are found to be unfruitful in many instances, because compliance officers may arrive at a worksite only to find that the employer has moved or gone out of business. Further, randomly conducted inspections are may also be carried out on worksites where employees are not exposed to hazardous conditions, due to diligence on the part of their employers, or because the nature of the work conducted at the site is not hazardous. Inspections carried out in response to reports required by Section 3 of this amended administrative regulation are indicative of recently-occurring workplace amputations, injuries, and illnesses. Accordingly, resultant worksite inspections have a good likelihood of resulting in the identification, characterization, and subsequent abatement of workplace hazards faced by employees in the Commonwealth. The provisions of Section 3 of this administrative regulation have been fruitful. Since becoming effective on November 1, 2006, the Division of Occupational Safety and Health

Compliance has received the following reports from employers: 339 total reports; including, 112 reports regarding employees suffering amputations; and 206 reports regarding employee injuries and illnesses requiring hospitalization. Further, the reports required by Section 3 of this administrative regulation have helped the Kentucky Labor Cabinet meet its charge under KRS 338.011 to, "promote the safety, health and general welfare of its people by preventing any detriment to the safety and health of all employees, both public and private." From the 339 reports received since the implementation of Section 3 of this administrative regulation, the Division of Occupational Safety and Health Compliance conducted 149 workplace inspections. From these inspections, a total of 80 violations of Kentucky's occupational safety and health regulations were identified. Of these violations, 72 citations classified as "serious," and 8 citations classified as "other than serious" were issued. For these violations, $252,085 in penalties were assessed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161 requires the development and maintenance of a program of collection, compilation, and analysis of occupational safety and health statistics. This administrative regulation meets this requirement by providing for the recording and reporting of work-related fatalities, amputations, injuries, and illnesses. The provisions of this administrative regulation also enable the Kentucky Labor Cabinet to meet its charge under KRS 338.011 to, "promote the safety, health and general welfare of its people by preventing any detriment to the safety and health of all employees, both public and private."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation enhances worker safety throughout Kentucky by allowing for the continued collection and utilization of data regarding work-related fatalities, amputations, injuries, and illnesses, and keeps the state occupational safety and health program at least as effective as the federal program. The provisions of this administrative regulation also enable the Kentucky Labor Cabinet to meet its charge under KRS 338.011 to, "promote the safety, health and general welfare of its people by preventing any detriment to the safety and health of all employees, both public and private."

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: References to the Department of Labor and other organizational units are updated throughout this amendment to reflect the establishment of the Labor Cabinet and relevant sub-agencies as directed by Executive Order 2008-472. In Section 2, the reference to 29 C.F.R. Part 1904 is updated to July 1, 2008. In Section 3, the effective and expiration dates applicable to this section are removed. This amendment does not set forth any new requirements. Also, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has been amended in order to prevent the provisions in Section 3(3)(a) and (b) from expiring on December 1, 2008. This amendment does not set forth any new requirements. Section 3(3)(a) requires that employers report all work-related amputations. Section 3(3)(b) requires that employers report all work-related hospitalizations of one or two employees, if the hospitalization occurs within 72 hours of the incident. Section 3(4) requires that reports under Section 3(3)(a) and (b) be made within 72 hours following the incident. The provisions in Section 3(3) are of high value to the Division of Occupational Safety and Health Compliance because they ensure that vital information is made available quickly to the agency regarding the number and nature of workplace amputations, injuries, and illnesses suffered by Kentucky's employees. When the agency receives a notification of a workplace amputation or hospitalization required by Section 3 of this amended administrative regulation, it may initiate an inspection of the worksite involved to determine if a violation of Kentucky's occupational safety and health regulations or statutes has occurred. The agency considers these types of inspections to be an optimum use of its resources, especially compared to randomly selected worksite inspections. Random inspections are found to be unfruitful in many instances, because compliance officers may arrive at a worksite only to find that the employer has moved or gone out of business. Further, randomly conducted inspections are may also be carried out on worksites where employees are not exposed to hazardous conditions, due to diligence on the part of their employers, or because the nature of the work conducted at the site is not hazardous. Inspections carried out in response to reports required by Section 3 of this amended administrative regulation are indicative of recently-occurring workplace amputations, injuries, and illnesses. Accordingly, resultant worksite inspections have a good likelihood of resulting in the identification, characterization, and subsequent abatement of workplace hazards faced by employees in the Commonwealth. The provisions of Section 3 of this administrative regulation have been fruitful. Since becoming effective on November 1, 2006, the Division of Occupational Safety and Health Compliance has received the following reports from employers: 339 total reports; including, 112 reports regarding employees suffering amputations; and 206 reports regarding employee injuries and illnesses requiring hospitalization. Further, the reports required by Section 3 of this administrative regulation have helped the Kentucky Labor Cabinet meet its charge under KRS 338.011 to, "promote the safety, health and general welfare of its people by preventing any detriment to the safety and health of all employees, both public and private." From the 339 reports received since the implementation of Section 3 of this administrative regulation, the Division of Occupational Safety and Health Compliance conducted 149 workplace inspections. From these inspections, a total of 80 violations of Kentucky's occupational safety and health regulations were identified. Of these violations, 72 citations classified as "serious," and 8 citations classified as "other than serious" were issued. For these violations, $252,085 in penalties were assessed.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 338.161, which requires a program of collection, compilation, and analysis of occupational safety and health statistics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the Division of Occupational Safety and Health Compliance and Division of Occupational Safety and Health Education and Training to meet OSHA's occupational injury and illness recordkeeping and reporting requirements mandated by 29 C.F.R. Part 1904. Further, it will allow the Kentucky Labor Cabinet, Division of Occupational Safety and Health Compliance and Division of Occupational Safety and Health Education and Training to meet the intent of KRS 338.011 to, "promote the safety, health and general welfare of its people by preventing any detriment to the safety and health of all employees, both public and private" by supporting their efforts at preventing occupational fatalities, amputations, injuries, and illnesses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All employers, employees, and places of employment throughout the Commonwealth covered by KRS 338 are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new or additional actions required by this amended regulation. Covered entities have been required to meet the requirements carried by this administrative regulation since November 1, 2006.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new or additional costs imposed on covered entities. The cost of complying with the recordkeeping requirements carried by 29 C.F.R. 1904, and adopted by Section 2, Section 3(1) and (2), of this administrative regulation were incurred by affected entities in 2001. At the time, OSHA estimated the costs incurred at $38.6 million nationally. State-specific cost estimates were not available. The costs to regulated entities within the Commonwealth relative to the reporting provisions in Section 3(3) and (4), of this administrative regulation have been in place since November 1, 2006, and are considered negligible due to the nearly

universal access and low cost of telephone service, and brevity of the mandated activity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Because this administrative regulation allows for heightened efficiency and effectiveness in the enforcement of the Commonwealth's occupational safety and health regulations, all covered entities, as well as citizens of the Commonwealth, may benefit indirectly from its administration in terms of the most effective use of public funding for the administration of the Kentucky Occupational Safety and Health Program and the optimization of its efforts toward the prevention and reduction of costly workplace injuries and illnesses.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this regulation. There are no new provisions or requirements.

(b) On a continuing basis: There will be no costs imposed on covered entities. The costs of complying with the recordkeeping requirements in Section 2, Section 3(1) and (2), of this administrative regulation were incurred by affected entities in 2001. At the time, OSHA estimated the costs incurred at $38.6 million nationally. State-specific cost estimates were not available. The costs to regulated entities within the Commonwealth relative to the reporting provisions in Section 3(3) and (4), of this administrative regulation have been in place since November 1, 2006, and are considered negligible due to the nearly universal access and low cost of telephone service, and brevity of the mandated activity.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees, nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953.

2. State compliance standards. Section 1 of this administrative regulation provides definitions for the administrative regulation. Section 2 meets the federal mandate by requiring that employers covered by KRS Chapter 338 comply with 29 C.F.R. Part 1904, for collecting workplace illness and injury data. Section 3(1) of this administrative regulation meets the mandate of 29 C F.R. Part 1904.39, by requiring that employers report work-related incidents resulting in fatalities and catastrophes, defined as the in-patient hospitalization of three or more employees as a result of single incident. Section 3(2) requires that these reports be made within 8 hours from when the incident is reported to the employer, employer's agent, or another employee. Section 3(3) of this administrative regulation carries two state-specific requirements. Section 3(3)(a) requires that employers report all work-related amputations. Section 3(3)(b) requires that employers report all work-related hospitalizations of one or two employees, if the hospitalization occurs within 72 hours of the incident. Section 3(4) requires that reports under Section 3(3)(a) and (b) be made within 72 hours following the incident.

3. Minimum or uniform standards contained in the federal mandate. 29 C.F.R. Part 1953 requires the Commonwealth's occupational safety and health program to be at least as effective as the program administered by OSHA. The federal mandate carried by 29 C.F.R. Part 1904 requires the collection of occupational illness and injury statistics, and the reporting of workplace fatalities and catastrophes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. Section 3(3) of this administrative regulation carries two state-specific requirements. Section 3(3)(a) requires that employers report all work-related amputations. Section 3(3)(b) requires that employers report all work-related hospitalizations of one or two employees, if the hospitalization occurs within 72 hours of the incident. Section 3(4) requires that reports under Section 3(3)(a) and (b) be made within 72 hours following the incident.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirements in Section 3(3) have been in effect since November 1, 2006, and are not burdensome. The provisions in Section 3(3) are of high value to the Division of Occupational Safety and Health Compliance because they ensure that vital information is made available quickly to the agency regarding the number and nature of workplace amputations, injuries, and illnesses suffered by Kentucky's employees. When the agency receives a notification of a workplace amputation or hospitalization required by Section 3 of this amended administrative regulation, it may initiate an inspection of the worksite involved to determine if a violation of Kentucky's occupational safety and health regulations or statutes has occurred. The agency considers these types of inspections to be an optimum use of its resources, especially compared to randomly selected worksite inspections. Random inspections are found to be unfruitful in many instances, because compliance officers may arrive at a worksite only to find that the employer has moved or gone out of business. Further, randomly conducted inspections are may also be carried out on worksites where employees are not exposed to hazardous conditions, due to diligence on the part of their employers, or because the nature of the work conducted at the site is not hazardous. Inspections carried out in response to reports required by Section 3 of this amended administrative regulation are indicative of recently-occurring workplace amputations, injuries, and illnesses. Accordingly, resultant worksite inspections have a good likelihood of resulting in the identification, characterization, and subsequent abatement of workplace hazards faced by employees in the Commonwealth. The provisions of Section 3 of this administrative regulation have been fruitful. Since becoming effective on November 1, 2006, the Division of Occupational Safety and Health Compliance has received the following reports from employers: 339 total reports; including, 112 reports regarding employees suffering amputations; and 206 reports regarding employee injuries and illnesses requiring hospitalization. Further, the reports required by Section 3 of this administrative regulation have helped the Kentucky Labor Cabinet meet its charge under KRS 338.011 to, "promote the safety, health and general welfare of its people by preventing any detriment to the safety and health of all employees, both public and private." From the 339 reports received since the implementation of Section 3 of this administrative regulation, the Division of Occupational Safety and Health Compliance conducted 149 workplace inspections. From these inspections, a total of 80 violations of Kentucky's occupational safety and health regulations were identified. Of these violations, 72 citations classified as "serious," and 8 citations classified as "other than serious" were issued. For these violations, $252,085 in penalties were assessed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.161, Pub. L. 91-596 (the Occupational Safety and Health Act of 1970), Section 18(c)(6), 29 C.F.R. 1952.11(a), and 29 C.F.R. 1952.11(b)(1) authorize this administrative regula-

tion.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There will be no new costs imposed on covered entities. The costs of complying with the recordkeeping requirements in Section 2, Section 3(1) and (2), of this administrative regulation were incurred by affected entities in 2001. At the time, OSHA estimated the costs incurred at $38.6 million nationally. State-specific cost estimates were not available. The costs to regulated entities within the Commonwealth relative to the reporting provisions in Section 3(3) and (4), of this administrative regulation have been in place since November 1, 2006, and are considered negligible due to the nearly universal access and low cost of telephone service, and brevity of the mandated activity.

(d) How much will it cost to administer this program for subsequent years? There will be no costs imposed on covered entities. The costs of complying with the recordkeeping requirements in Section 2, Section 3(1) and (2), of this administrative regulation were incurred by affected entities in 2001. At the time, OSHA estimated the costs incurred at $38 6 million nationally. State-specific cost estimates were not available. The costs to regulated entities within the Commonwealth relative to the reporting provisions in Section 3(3) and (4), of this administrative regulation have been in place since November 1, 2006, and are considered negligible due to the nearly universal access and low cost of telephone service, and brevity of the mandated activity.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown
Expenditures (+/-): Unknown
Other explanation: None

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Agent Licensing
(Amendment)

806 KAR 9:220. Continuing education.

RELATES TO: KRS 304.9-230, 304.9-260, 304.9-295, 304.14-642, 304.15-700(3), Pub L. 108-264 sec. 207

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-295(5), (7), 304.14-642(5), 304.15-720, Pub L 108-264 sec 207

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-295(5) and (7) authorize the executive director to limit the number of continuing education hours carried forward to the subsequent biennium. KRS 304.14-642(5) requires the executive director to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Program KRS 304.15-720 requires the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720, Kentucky's Life[~~Viatical~~] Settlement Law. Pub L 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with state insurance regulators. This administrative regulation establishes procedures for approval of agent and life[~~viatical~~] settlement broker continuing education courses and obtaining credit for attending continuing education courses.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Insurance [~~"Executive director" means the Executive Director of the Office of Insurance.~~]

(2) "Department" means the Department of Insurance [~~"Office" means the Office of Insurance.~~]

(3) "Provider" means the sponsor of a continuing education course.

Section 2. Continuing Education Course Requirements. (1) A continuing education course shall be offered by a provider approved by the commissioner[~~executive director~~], pursuant to this section:

(a) The application for approval of a provider shall be submitted on the "Provider Approval Application" form incorporated by reference, in 806 KAR 9:340; and

(b) The information shall show that the provider is qualified, through knowledge or experience, to provide prelicensing or continuing education courses and that the provider is properly authorized to charge a course fee, if any.

(2)(a) A continuing education course shall be filed with and approved by the commissioner[~~executive director~~] at least sixty (60) days in advance of advertising unless the commissioner[~~executive director~~], waives the sixty (60) day period.

(b) In determining whether to grant a waiver, the commissioner[~~executive director~~] shall consider whether the failure to file and approve the continuing education course within the time period specified in paragraph (a) of this subsection was due to circumstances which would reasonably justify failure to comply.

(3)(a)1 All applications for approval of a continuing education course shall be submitted on the "Course Approval Application" form incorporated by reference, in 806 KAR 9:340, which[~~and~~] shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, in 806 KAR 9:340, and a nonrefundable[~~an~~] initial fee of ten (10) dollars [~~which shall be when paid and shall not be refundable~~].

2. Notwithstanding the requirements in paragraph (a)1 Of this subsection, application for approval of a continuing education course being offered in more than one (1) state, may be submitted on the Nation Association of Insurance Commissioners' "Uniform Continuing Education Reciprocity Course Filing Form" incorporated by reference in 806 KAR 9:340.

(b) After review and assignment of the number of credit hours, the commissioner[~~executive director~~] shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4 010.

(c) A continuing education course shall not be approved until all fees are paid.

(4) The commissioner[~~executive director~~] shall approve a continuing education course if it meets the following requirements:

(a) The continuing education course shall contribute directly, at a professional level, to the competence of the licensee including the following subjects:

1. Insurance, annuities, and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;
7. Taxes;
8. Business environment, management, or organization;
9. Ethics; and
10. Other topics approved by the commissioner[~~executive director~~] which contribute directly at a professional level to the competence of the licensee; and

(b) Course development and presentation:

1. The continuing education course shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;

2. The course shall be developed by persons who are qualified in the subject matter and instructional design;

3. Material[~~The course content~~] shall be current, relevant, ac-

curate, and include valid reference materials, graphics, and interactivity;

4. The course shall have clearly defined objectives and course completion criteria;

5. Each course shall have a written outline and study materials or texts;

6 [~~5.~~] Information shall show that the instructors are qualified, through training or experience, to instruct the continuing education course competently and shall be submitted on the "Instructor Approval Application" incorporated by reference, in 806 KAR 9:340, and shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, as in 806 KAR 9:340;

7 [~~6.~~] The number of participants and physical facilities shall be consistent with the teaching method specified; and

8 [~~7.~~] All courses shall include some means of evaluating quality.

(5) Continuing education credit shall not be provided for:

(a) Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

(b) Committee service of professional organizations;

(c) Computer training to develop functional skills

(d) Motivational or sales training courses; and

(e) Any course not in accordance with Section 2(4) of this administrative regulation.

(6) Any material change in a continuing education course shall be filed with and approved by the commissioner[~~executive director~~] prior to use. The material change shall not be approved until the filing fees are paid in accordance with subsection (3) of this section.

(7) Biennially, providers shall renew approval of continuing education courses and instructors. Providers shall file applicable information with and pay the applicable fee specified in 806 KAR 4 010 to the commissioner[~~executive director~~] prior to June 30 of even-numbered years.

Section 3. Measurement of Credit Hours Continuing education courses shall be measured according to course type and calculated in the following manner:

(1) Classroom courses. Each credit hour of a continuing education course shall include at least fifty (50) minutes of continuous instruction or participation.

(2) Self-Study Courses. Each credit hour of a continuing education course completed online or by correspondence shall be calculated in accordance with the National Association of Insurance Commissioner's "Recommended Guidelines for Online Courses."

(3) A continuing education course, regardless of whether it is offered as a classroom course, online course, by correspondence, or self-study, shall not be credited for continuing education by a licensee more than once per continuing education biennium.

[~~(3) Licensees shall be limited to a maximum of twelve (12) credit hours for self-study courses per continuing education biennium.~~

~~(4) A self-study course shall not be approved for continuing education credit of more than twelve (12) hours unless the course is identified by KRS 304.9-295(5) (a)1 to 7 and 10.~~]

Section 4. Reasons for Withdrawal. The commissioner[~~executive director~~] may withdraw approval of a continuing education course, provider, or instructor for any of the following reasons:

(1) The continuing education course teaching methods or course content;

(a) No longer meet the requirements of;

1. KRS 304.9-295; or

2. Sections 2 and 3 of this administrative regulation; or

(b) The course has been materially changed without being filed with and approved by the commissioner[~~executive director~~], in accordance with Section 2 of this administrative regulation;

(2) The continuing education course provider has certified to the commissioner[~~executive director~~] that a licensee has satisfactorily completed the course when, in fact, the licensee has not done so;

(3) The continuing education course provider fails to certify to the commissioner[~~executive director~~] that a licensee has satisfactorily completed the course when, in fact, the licensee has done so; or

(4) Unethical conduct of a provider or instructor.

Section 5. Product Specific Continuing Education and Training Requirements.

(1) Any resident licensee selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304 14-462, shall complete eight (8) hours of initial long-term care training, and four (4) hours of additional training for each biennial continuing education compliance period;

(2) Any resident licensee licensed with Property and Casualty lines of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub L. 108-264, Section 207;

(3) The training requirements in subsections (1) and (2) of this section may apply toward fulfillment of a licensee's continuing education requirement as set forth in KRS 304 2-295 and 304 15-700(3), if the training has been approved as a continuing education course in accordance with Section 2 of this administrative regulation and proof of completion is made in accordance with Section 6 of this administrative regulation.

Section 6. Proof of Completion. (1)(a) Within thirty (30) days of completion of a continuing education course, the provider shall certify to the commissioner[~~executive director~~] the names of all licensees who satisfactorily completed the continuing education course.

(b) The provider shall maintain the "Continuing Education Course Attendance Roster" form, incorporated by reference in 806 KAR 9:340, for at least five (5) years and shall be subject to random audits to ensure compliance with this requirement.

(c) The certification of completion required by this section for a classroom course shall be submitted electronically on the "Continuing Education Course Attendance Roster" form, incorporated by reference in 806 KAR 9:340, through the Department of Insurance Web site, https://doi.ppr.ky.gov/kentucky/secured/Eservices/default.aspx.

(d)1. The certification of completion required by this section for a self-study course shall be submitted on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9:340.

2 [~~, which~~] The provider shall:

a. Forward the form[~~file with the executive director or shall forward~~] to the licensee for signature; and

b. Instruct[~~with instructions for~~] the licensee to file the form with the commissioner[~~executive director~~].

3. In addition, the information may be submitted electronically by the provider to the commissioner[~~executive director~~] through the Department[~~Office~~] of Insurance Web site, https://doi.ppr.ky.gov/kentucky/secured/Eservices/default.aspx

(2)(a) The provider of the continuing education course shall furnish to the licensee attending the course a certificate and the licensee shall retain the certificate for at least five (5)[~~three (3)~~] years.

(b) The certification required by this subsection shall be on the "Continuing Education Certificate of Completion" Form, incorporated by reference in 806 KAR 9.340.

(c) The provider of the continuing education course shall retain a copy of the certificate for at least five (5)[~~three (3)~~] years.

(d) Providers of continuing education courses and licensees shall make available to the commissioner[~~executive director~~] or his or her designee copies of these certificates upon the request of the commissioner[~~executive director~~].

(3) Pursuant to KRS 304.9-295(2) and (9), every licensee shall be responsible for ensuring that his or her continuing education certificates of completion are timely filed with the department even if the provider does not fulfill its responsibilities under this administrative regulation[~~office~~]

(4)(a) At least six (6) hours of total credit earned per biennium shall be directly related to any one (1) or more of the lines of authority for which the agent is actively licensed.

(b) At least three (3) hours of total credit earned per biennium shall be in ethics.

(c) Hours may be classroom, self-study, or a combination of both.

(5) Each self-study course shall require successful completion of a written examination or the submission of a statement by the licensee made under oath that the course was completed within the biennium.

(6) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

Section 7.[6.] Cancellation and Reinstatement of Licenses. (1) Proof of fulfillment of a resident licensee's continuing education requirement shall be received in conjunction with license renewal in accordance with KRS 304.9-260 and 304 9-295

(2) If the department[office] does not receive proof of the fulfillment of a licensee's continuing education requirements [~~for a resident licensee~~] on or before the deadline, pursuant to KRS 304 9-295 [~~July 30 in even-numbered years, and for a nonresident licensee or a nonresident viatical settlement broker licensee on or before sixty (60) days from the end of the continuing education biennium,~~] the commissioner[~~executive director~~] shall:

(a) Make information of the deficiency available to the licensee, and

(b) Terminate the license if proof of completion of the deficient hours on the "Continuing Education Course Attendance Roster" Form incorporated by reference, in 806 KAR 9:340, or the "Continuing Education Certificate of Completion" Form incorporated by reference, in 806 KAR 9.340, is not received by the department[~~office~~] on or before the deadline in accordance with KRS 304 9-295.

(3)[~~(2)~~] Within twelve (12) months after a license is terminated for failing to submit certification of continuing education, the license may be reissued if the licensee:

(a) Satisfies the delinquent continuing education requirements;

(b)[~~,~~] Submits a new application with required attachments for a license,[~~,~~] and

(c) Submits the applicable fees.

(4)[~~(3)~~] If the continuing education delinquency remains unsatisfied for twelve (12) months or longer, the former licensee shall satisfy all of the licensing requirements specified in KRS Chapter 304, Subtitle 9.

Section 8. Requests for an Extension of Time [~~7. Affidavit for Exemption~~]from Continuing Education. (1) [~~Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any other reason, including an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.~~

~~(2)~~] An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw[~~give up~~] the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

(a) Completing the continuing education requirements for the immediate preceding continuing education biennium;

(b) Providing a certification of completion of those continuing education requirements; and

(c) Providing a signed, written statement withdrawing the affidavit.

(2) Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any reason, including an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304 9-295 and shall subject the affiant to suspension or revocation of the agent license

(3) Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department form, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," incorporated by reference in 806 KAR 9.340; or

(b) Request a waiver for continuing education requirements in accordance with KRS 304 9-260(3).

Section 9 [~~8.~~] Limited lines of authority as identified in KRS 304.9-230 shall be exempt from all continuing education requirements.

Section 10. Incorporation by reference (1) "Recommended Guidelines for Online Courses" (2005 National Association of Insurance Commissioners), is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON CLARK, Commissioner
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 15, 2008

FILED WITH LRC: September 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2008 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 23, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1)Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for approval of agent and viatical settlement broker continuing education courses and obtaining credit for attending continuing education courses. This regulation also establishes procedures for training required for the federal Flood Insurance Program and the Long-Term Care Partnership Act, established by 08 RS HB 259.

(b) The necessity of this administrative regulation: This administrative regulation fulfills the commissioner's statutory obligation to specify licensee education forms and processes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-295(6) and (7) authorize the executive director to limit the number of continuing education hours carried forward to the subsequent biennium and to prescribe the form used to certify completion of a continuing education course. KRS 304.14-642(5) requires the executive director to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Program. KRS 304.15-720 requires the executive director to promulgate administrative regulations that are necessary for the licensing of life settlement brokers. Pub.L. 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance

agents who sell flood insurance policies in cooperation with state insurance regulators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation supplements the general statutory provisions for continuing education and carry over credit hours by specifying the continuing education procedure, the measurement of credit hours, the approval of courses and instructors, the number of hours and distribution of course work, the number of carry over hours, and exemption from continuing education.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment changes agency names in accordance with EO 2008-507. Additionally, this amendment makes changes to implement 08 RS HB 259, related to the Long-Term Care Partnership Program and 08 RS HB 348, related to life settlement providers, clarifies training requirements for the federal flood program, and sets forth a method for calculating credit hours for self-study courses.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to implement new legislation and to provide consistency with national standards for calculating course credit.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-295(6) and (7) authorize the executive director to limit the number of continuing education hours carried forward to the subsequent biennium and to prescribe the form used to certify completion of a continuing education course. KRS 304.14-642(5) requires the executive director to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Program. KRS 304.15-720 requires the executive director to promulgate administrative regulations that are necessary for the licensing of life settlement brokers. Pub.L. 108-264 sec. 207 requires the Administrator of the Federal Emergency Management Agency to establish minimum training and education requirements for all insurance agents who sell flood insurance policies in cooperation with state insurance regulators.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing continuity between the statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts approximately 18,381 resident licensees and life settlement brokers subject to continuing education requirements. Additionally, this regulation impacts approximately 196 continuing education providers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment makes technical changes and clarifications and should have no new effect on licensees. Continuing education providers will be provided with specific guidance on determining the number of credit hours to be assigned to self-study courses.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There should be no initial cost to implement this administrative regulation.

(b) On a continuing basis. There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish any new fees or increase any existing fees. The existing administrative regulation did include a ten (10) dollar fee for the initial filing of a continuing education course and an additional five (5) dollar fee for each additional approved credit hour.

(9) TIERING: Is tiering applied? No, tiering does not apply because this administrative regulation is applied in the same manner to all licensees subject to continuing education and to all providers filing for approval of continuing education courses.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.9-295(5), (7), 304.14-642(5), 304.15-720, Pub.L. 108-264 sec. 207.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The federal statute requiring promulgation of this administrative regulation is Pub.L. 108-264, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004.

2. State compliance standards. Section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 requires the Director of the Federal Emergency Management Agency to establish minimum training and education requirements for al insurance agents who sell flood insurance policies in cooperation with the insurance industry, state insurance regulators, and other interested parties.

3. Minimum or uniform standards contained in the federal mandate. The minimum training and education requirements were published on September 1, 2005, in the Federal Register, Vol. 70 No. 169, at page 52117. Additionally, the National Association of Insurance Commissioners (NAIC) has adopted a uniform training bulletin for states to issue outlining the process to implement the training requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this regulation does not impose stricter, additional or different requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Agent Licensing
(Amendment)

806 KAR 9:340. Forms for application, appointment, prelicensing, and continuing education course completion; examination retake, provider, and course approval; filing fee submission, instructor approval, continuing education attendance roster, and certificate of completion; specialty credit insurance producer supplement to license application, rental vehicle license supplemental application, continuing education certificate of completion, rental vehicle managing employee, continuing education certificate of completion, unlicensed employees, and representatives of rental vehicle agent; record correction, and background check request.

RELATES TO: KRS 304.9-080, 304.9-105, 304.9-130, 304.9-140, 304.9-150, 304.9-160, 304.9-190, 304.9-200, 304.9-220, 304.3-230, 304.9-260(3), 304.9-270, 304.9-280, 304.9-295, 304.9-320, 304.9-430, 304.9-432, 304.9-480, 304.9-485, 304.9-505(4), 304.9-513, 304.9-705, 304.15-700

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(1)[(4)], 304.9-230(2), 304.9-295(9), KRS 304.9-430(1), 304.9-485(2), 304.9-513, 304.15-700, 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the executive director to adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(4) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-295(9) authorizes the executive director to prescribe a form for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.15-700(2) authorizes the executive director to prescribe forms for the licensing of life[viatical] settlement providers and life[viatical] settlement brokers. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720.

Section 1. (1) Form CPL-01, "Certificate of Prelicensing Course Completion," shall be filed with the Department[Office] of Insurance by a prelicensing provider for each applicant that has completed a prelicensing course of study.

(2) Form 8301, "NAIC Individual Insurance Producer License Application," shall be filed by an individual applicant with the Department[Office] of Insurance to initiate the licensing process for a resident and nonresident individual agent, surplus lines broker, consultant, temporary agent, rental vehicle managing employee, specialty credit managing employee, managing general agent, adjuster, apprentice adjuster, administrator, reinsurance intermediary manager, reinsurance intermediary broker, life[viatical] settlement broker and life[viatical] settlement provider.

(3) Form 8301-BE, "NAIC Business Entity License Application," shall be filed with the Department[Office] of Insurance by a business entity applicant to initiate the licensing process for the business entity counterparts of the individual licenses.

(4) Form 8302-AP, "Producer Appointment [Form]," shall be filed by an insurer to notify the Department[Office] of Insurance that an individual or business entity agent or agency has been appointed to represent the insurer.

(5) Form 8202-TE, "Termination of Producer Appointment[Form]," shall be filed by an insurer with the Department[Office] of Insurance to terminate an agent's appointment with an insurer.

(6) Form VS, "Voluntary Surrender of License," shall be filed by an agent with the Department[Office] of Insurance to surrender his or her license.

(7) Form 8305, "Business Entity Designation or Termination of Designation Form," shall be filed with the Department[Office] of Insurance by a business entity to designate individuals to be authorized to act under the business entity's license and appointments.

(8) Form 8307, "Request for Unlicensed Adjuster Representing an Insurer to Adjust Losses Resulting From a Catastrophe[Activity]," shall be filed with the Department[Office] of Insurance by an insurer to give an adjuster that is not licensed in Kentucky temporary authority to adjust catastrophic claims.

(9) Form 8304, "Examination Retake Form," shall be filed with the Department[Office] of Insurance by an applicant who fails an examination or fails to keep an appointment to take an examination to request the opportunity to retake the examination.

(10) Form KYP-01, "Provider Approval Application," shall be filed by an applicant with the Department[Office] of Insurance to request certification as a continuing education or prelicensing provider.

(11) Form CE/PL-100, "Course Approval Application," shall be filed by a provider with the Department[Office] of Insurance to request approval of continuing education and prelicensing courses.

(12) Form KYF-01, "Filing Fee Submission Form" shall be filed by a provider with the Department[Office] of Insurance along with Form CE/PL-100 and Form CE/PL-200. It identifies the title of the course, the identity of the instructor and specifies the applicable filing fee.

(13) Form CE/PL-200, "Instructor Approval Application," shall be filed with the Department[Office] of Insurance to request approval of continuing education and prelicensing instructors.

(14) Form CE-300, "Continuing Education Course Attendance Roster," shall be filed by a certified provider with the Department[Office] of Insurance to certify licensees' attendance at a continuing education course.

(15) Form CE-301, "Approved Continuing Education Certificate of Completion," may be filed with the Department[Office] of Insurance to certify licensees' completion of a continuing education course.

(16) Form CA AFF 304, "Affidavit for Exemption from Continuing Education," shall be filed with the Department[Office] of Insurance by an agent that does not intend to sell any new insurance business to maintain his or her license to collect renewal commissions only.

(17) Form 8301-SC, "Specialty Credit Insurance Producer Supplemental[Supplement to License] Application," shall be filed with the Department[Office] of Insurance by a specialty credit insurance producer to list the retail stores that are included under the license.

(18) Form 8301-RV, "Rental Vehicle License – Supplementation Application," shall be filed with the Department[Office] of Insurance by a rental vehicle insurance producer to list the retail stores that are included under the license.

(19) Form CE/RV-302, "Continuing Education Certificate of Completion, Rental Vehicle Managing Employee," shall be filed with the Department[Office] of Insurance to certify the completion of the managing employee's continuing education.

(20) Form CE/RV-303, "Continuing Education Certification of Completion, Unlicensed Employees and Representatives[Representative of Rental Vehicle Agent]," shall be filed with the Department[Office] of Insurance to certify the completion of continuing education by all unlicensed employees.

(21) Form 8303, "Record Correction Form," shall be filed with the Department[Office] of Insurance by a licensee to make a change to the licensee's name or address.

(22) Form 8301-BGC, "Licensing[Background Check] Request Form," shall be filed by an applicant with the Administrative Office of the Courts to request a criminal background check that is required prior to licensing.

(23) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing

Education Due to Active Military Service Deployment," is the form that members of the Armed Forces who have been mobilized or deployed in support of their duties may use to request a waiver of renewal penalties and sanction, a waiver of continuing education requirements, an exemption of examination, or an extension of time for completion of continuing education requirements.

(24) "NAIC Uniform Continuing Education Reciprocity Course Filing Form" is the form that continuing education providers can submit to request course approval if the course is being offered in multiple states.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CPL-01, "Certificate of Prelicensing Course Completion (9/2008[~~5/2005~~] edition)";

(b) Form 8301, "NAIC Individual Insurance Producer License Application (9/2008[~~5/2005 edition~~])";

(c) Form 8301-BE, "NAIC Business Entity License Application (9/2008[~~5/2005 edition~~])";

(d) Form 8302-AP, "Producer Appointment [~~Form~~] (9/2008[~~5/2005~~] edition)";

(e) Form 8302-TE, "Termination of Producer Appointment (9/2008[~~5/2005~~] edition)";

(f) Form VS, "Application for Voluntary Surrender of License (9/2008[~~5/2005~~] edition)";

(g) Form 8305, "Business Entity Designation or Termination of Designation Form (9/2008[~~5/2005~~] edition)";

(h) Form 8307, "Request for Unlicensed Adjuster Representing an Insurer to Adjust Losses Resulting From a Catastrophe[~~Activity~~] (9/2008[~~5/2005~~] edition)";

(i) Form 8304, "Examination Retake Form (9/2008[~~5/2005~~] edition)";

(j) Form KYP-01, "Provider Approval Application (9/2008[~~5/2005~~] edition)";

(k) Form CE/PL-100, "Course Approval Application (9/2008[~~5/2005~~] edition)";

(l) Form KYF-01, "Filing Fee Submission Form (9/2008[~~5/2005~~] edition)";

(m) Form CE/PL-200, "Instructor Approval Application" (9/2008[~~5/2005~~] edition)";

(n) Form CE-300, "Continuing Education Course Attendance Roster (9/2008[~~5/2005~~] edition)";

(o) Form CE-301, "Approved Continuing Education Certificate of Completion (9/2008[~~5/2005~~] edition)";

(p) Form CE AFF 304, "Affidavit for Exemption from Continuing Education (9/2008[~~5/2005~~] edition)";

(q) Form 8301-SC, "Specialty Credit Insurance Producer Supplement to License Application (9/2008[~~5/2005~~] edition)";

(r) Form 8301-RV, "Rental Vehicle License - Supplemental Application (9/2008[~~5/2005~~] edition)";

(s) Form CE/RV-302, "Continuing Education Certificate of Completion, Rental Vehicle Managing Employee (9/2008[~~5/2005~~] edition)";

(t) Form CE/RV-303, "Continuing Education Certificate of Completion, Unlicensed Employees and Representatives [~~of Rental Vehicle Agent~~] (9/2008[~~5/2005~~] edition)";

(u) Form 8303, "Record Correction Form (9/2008[~~5/2005~~] edition)"; and

(v) Form 8301-BGC, "Licensing[~~Background Check~~] Request Form (9/2008[~~5/2005~~] edition)"; and

(w) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment (10/2007 edition);

(x) "NAIC Uniform Continuing Education Reciprocity Course Filing Form" (2004 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department[~~Office~~] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or on the Department[~~Office~~] of Insurance Web site, http://doi.ppr.ky gov.

SHARON CLARK, Commissioner
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 15, 2008
FILED WITH LRC: September 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2008, at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 23, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the required forms for license application, appointment, pre-licensing, and continuing education course completion; examination retake; provider and course approval, filing fee submission; instructor approval; continuing education attendance roster and certificate of completion; specialty credit insurance producer supplement to license application; rental vehicle license supplemental application; continuing education certificate of completion; rental vehicle managing employee; continuing education certificate of completion; unlicensed employees and representatives of rental vehicle agent; record correction; and background check request.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of subtitles 9 and 15, which require the commissioner to prescribe forms for insurance licensing and education detailed above.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(1) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-295(9) authorizes the executive director to prescribe a form for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.15-700(2) authorizes the executive director to prescribe forms for the licensing of life settlement brokers. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to ensure that complete information is filed for review with the Department of Insurance on initial licensing, and prescribes the required forms to ensure that the licensees continue to meet the statutory require-

ments for licensing.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment incorporates updates to the following forms: Kentucky Individual Application, Kentucky Business Entity Application, Application for Voluntary Surrender of License, and Record Correction Form. Additionally, the amendments incorporate the form, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment and the NAIC Uniform Continuing Education Reciprocity Course Filing Form.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to incorporate changes to Kentucky's forms based on national changes and commonly asked questions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the executive director may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-160(1) authorizes the executive director to develop examinations in accordance with administrative regulations promulgated by the executive director. KRS 304.9-230(2) authorizes the executive director to establish requirements for the examination for limited lines licenses. KRS 304.9-295(9) authorizes the executive director to prescribe a form for the certification of continuing education hours. KRS 304.9-430(1) requires the executive director to prescribe forms related to the adjuster examination process. KRS 304.9-485(2) directs the executive director to prescribe application forms for specialty credit insurance producers and managing employees. KRS 304.9-505(4) authorizes the executive director to prescribe forms for the licensing of rental vehicle agents and managing employees. KRS 304.9-513 authorizes the executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513. KRS 304.15-700(2) authorizes the executive director to prescribe forms for the licensing of life settlement brokers. KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to ensure that complete information is filed for review with the Department of Insurance on initial licensing, and prescribes the required forms to ensure that the licensees continue to meet the statutory requirements for licensing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect an undetermined number of individual and business entities that apply for an insurance producer license in Kentucky, request a correction to their record on file with the Department, and apply to voluntarily surrender their license. This regulation will also affect an undetermined number of active military members who request a waiver from specific licensing requirements.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This regulation prescribes the forms that impacted individuals and business entities will be required to use to do business with the Agent Licensing Division.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There should not be an initial cost to implement this administrative regulation.

(b) On a continuing basis: There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees, directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all members of each license class in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.9-295(9), KRS 304.9-430(1), 304.9-485(2), 304 9-513, 304.15-700, 304.15-720.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:081. Minimum standards for long-term care insurance policies.

RELATES TO: KRS 304 1-040, 304.2-310, 304 6-070, 304 6-130-180, 304 9-080, 304.12-020, 304.12-030, 304.12-130, 304.14-120(2), 304.14-600-304 14-644, 304.15-310, 304.15-315,[~~304.14-625, 304.18-110~~] 304.18-120, 304.18-127, 304.29-600, 304.32-290, 304.38-220, 26 U.S.C. 7702B, 42 U.S.C. 1395x(r), 45 C.F.R 160 103

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-615, 304.14-620, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-615(1) requires the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for the manner, content, and sale of long-term care insurance policies. KRS 304.14-620 requires the Executive Director of Insurance to promulgate administrative regulations to establish

minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations [~~which he deems~~] necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations [~~which he deems~~] necessary for the proper administration of KRS Chapter 304.38. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the Department. This administrative regulation establishes minimum standards for long-term care insurance.

Section 1. Definitions (1) "Applicant" is defined in KRS 304.14-600(3).

(2) "Attained age rating" means a schedule of premiums starting from the issue date which increases age at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50).

(3) "Certificate" is defined in KRS 304.14-600(4).

(4) "Chronically-ill individual", pursuant to 26 U.S.C. 7702B(c)(2):

(a) Means any individual who has been certified by a licensed health care practitioner as:

1. Being unable to perform without substantial assistance from another individual at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or

2. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; and

(b) Shall not include an individual otherwise meeting these requirements unless within the preceding twelve month period a licensed health care practitioner has certified that the individual meets these requirements.

(5) "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(6) "Cold lead advertising" means the use of any method of marketing which fails to disclose in a clear, easy to notice manner that a purpose of the method of marketing is solicitation of insurance and contact will be made by an insurance agent or insurance company.

(7) "Commissioner" means the Commissioner of Insurance.

(8) "Denied claim" means the insurer refuses to pay a claim for any reason except for failure to meet the waiting period or due to an applicable preexisting condition.

(9) "Department" means the Department of Insurance.

(10) "Exceptional increase" means a premium rate increase filed by an insurer as exceptional, which the commissioner determines is necessary and justified due to:

(a) Changes in Kentucky laws or administrative regulations applicable to long-term care coverage, or

(b) Increased and unexpected utilization that affects the majority of insurers of similar products.

(11) "Group long-term care insurance" is defined in KRS 304.14-600(5).

(12) "High pressure tactics" means employing any method of marketing that may affect or induce the purchase of insurance through force, fright, explicit or implied threat, or create undue pressure to purchase or recommend the purchase of insurance.

(13) "Incidental" is defined in KRS 304.14-600(1).

(14) "Individually-identifiable information" means personal information gathered in connection with an insurance transaction from which judgment may be made regarding an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or other personal characteristics including an individual's name, address, and medical record information.

(15) "Insurer" is defined in KRS 304.1-040.

(16) "Interlocking directorates" means two (2) separate boards of directors that have at least one (1) director in common.

(17) "Kentucky insurance code" means the statutes referenced in KRS 304.1-010 and the administrative regulations established in KAR Title 806.

(18) "Licensed health care practitioner" means a physician as defined in 42 U.S.C. 1395x(r), registered nurse, licensed social worker, or other individual who meets the requirements of 26 U.S.C. 7702B(c)(4).

(19) "Limited distribution channel" means a discrete entity, including a financial institution or brokerage, through which a specialized product is made available to a purchaser other than the general public.

(20) "Long-term care benefits classifications" means:

(a) Institutional long-term care benefits only;

(b) Noninstitutional long-term care benefits only; or

(c) Comprehensive long-term care benefits.

(21) "Long-term care insurance" is defined in KRS 304.14-600(2).

(22) "Maintenance or personal care services" means care for which the primary purpose is the provision of needed assistance with a disability as a result of which the individual is a chronically-ill individual, including protection from threats to health and safety due to severe cognitive impairment.

(23) "Managed-care plan" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

(24) "Misrepresentation" means misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(25) "Policy" is defined in KRS 304.14-600(6).

(26) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(27) "Qualified long-term care insurance contract" or "federally-tax-qualified long-term care insurance contract" means:

(a) An individual or group insurance contract that meets the requirements of 26 U.S.C. 7702B(b) as follows:

1. The insurance protection provided under the contract shall be limited to coverage of qualified long-term care services and the contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

2.a. The contract shall not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, 42 U.S.C. 1395 et seq., or would be reimbursable except for the application of a deductible or coinsurance amount;

b. The requirements of this subparagraph shall not apply to expenses that are reimbursable under 42 U.S.C. 1395 et seq. as a secondary payor; and

c. The contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

3. The contract shall be guaranteed renewable, as established in 26 U.S.C. 7702B(b)(1)(C);

4. The contract shall not provide for a cash surrender value or other money that may be paid, assigned, pledged as collateral for a loan, or borrowed except as required in subparagraph 5 of this paragraph;

5. Refunds of premiums and policyholder dividends or similar amounts under the contract shall be applied as a reduction in future premiums or to increase future benefits, except that a refund upon death of the insured, a complete surrender, or cancellation of the contract shall not exceed the aggregate premiums paid under the contract; and

6. The contract shall meet the consumer protection provisions as established in 26 U.S.C. 7702B(g); or

(b) The portion of a life insurance contract that:

1. Provides long-term care insurance coverage by rider or as part of the contract; and

2. Meets the requirements of 26 U.S.C. 7702B(b) and (e).

(28) "Qualified long-term care services" means services required in 26 U.S.C. 7702B(c)(1), including necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically-ill individual, and provided pursuant to

a plan of care prescribed by a licensed health care practitioner.

(29) "Similar policy forms" means:

(a) Long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered; or

(b) Certificates of groups, as identified in KRS 304.14-600(5)(a) similar to other comparable certificates of groups that meet the definition in KRS 304 14-600(5)(a) with the same long-term care benefit classifications.

(30) "Twisting" means knowingly making a misleading representation or incomplete or fraudulent comparison of insurance policies or insurers for the purpose of inducing, or tending to induce, a person to:

(a) Lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy; or

(b) Secure an insurance policy from another insurer.

Section 2. Policy Definitions. A long-term care insurance policy delivered or issued for delivery in Kentucky shall not include the following terms unless the terms are defined in the policy and the definitions satisfy the following requirements:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means that the individual is medically unstable and requires frequent monitoring by medical professionals, including physicians and registered nurses, in order to maintain health status.

(3) "Adult day care" means a program for four (4) or more individuals, of social- or health-related, or both, services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who may benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath, or in a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(6) "Continence" means the ability to maintain control of bowel and bladder function, or, if unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle, including a plate, cup, or table, or by a feeding tube or intravenously.

(9) "Hands-on assistance" means minimal, moderate, or maximal physical assistance without which the individual would not be able to perform the activity of daily living.

(10) "Home health-care services" means medical and nonmedical services, including homemaker services, assistance with activities of daily living, and respite care services, provided to ill, disabled, or infirmed persons in their residences.

(11) "Medicare" means:

(a) "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended;"

(b) "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof;" or

(c) Words similar to paragraph (a) and (b) of this subsection.

(12) "Mental or nervous disorder" means neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(13) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care", "intermediate care", "personal care", "home care", and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care shall be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of bed, chair, or wheelchair.

(17)(a) "Skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", "assisted living facility", "home care agency", "specialized care providers", and other providers of services shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services; and

(b) If the definition requires that the provider be appropriately licensed, certified, or registered, the definition shall also include the requirements that a provider shall meet in lieu of licensure, certification or registration if the state in which the service is provided,

1. Does not require a provider of these services to be licensed, certified or registered; or

2. Licenses, certifies or registers the provider of services under another name.

Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in an individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 6 of this administrative regulation.

(a) A long-term care insurance policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" shall be used only if:

1. The insured has the right to continue the long-term care insurance in force by the timely payment of premiums; and

2. Except for a revision of rates on a class basis, the insurer has no unilateral right to make a change in a provision of the policy or rider while the insurance is in force, and shall not decline to renew.

(c) The term "noncancellable" shall be used only if the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during the period in which the insurer has no right to unilaterally make a change in a provision of the insurance or in the premium rate.

(d) The term "level premium" shall only be used if the insurer does not have the right to change the premium.

(e) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, pursuant to 26 U.S.C. 7702B(b)(1)(C).

(2)(a) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

1. Preexisting conditions or diseases in accordance with KRS 304.14-615(3)(d);

2. Mental or nervous disorders except for Alzheimer's disease;

3. Alcoholism and drug addiction;

4. Illness, treatment, or medical condition as a result of:

a. War or act of war, whether declared or undeclared;

b. Participation in a felony, riot, or insurrection;

c. Service in the armed forces or auxiliary units;

d. Suicide, if sane or insane, attempted suicide, or intentionally self-inflicted injury; or

e. Except for fare-paying passengers, aviation;

5. a. Treatment provided in a government facility, unless otherwise required by law;

b. Services for which benefits are available under:

(i) Medicare or other governmental program, except Medicaid;

(ii) A state or federal workers' compensation;

(iii) Employer's liability or occupational disease law; or

(iv) A motor vehicle no-fault law;

c. Services provided by a member of the covered person's immediate family; and

d. Services for which no charge is normally made in the absence of insurance;

6. Expenses for services or items available or paid under another long-term care insurance or health insurance policy;

7. If a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses;

a. Are reimbursable under 42 U.S.C. 1395 et seq.; or

b. Would be reimbursable except for the application of a deductible or coinsurance amount;

(b)1. This subsection is not intended to prohibit the delivery or issue for delivery of a long-term care policy with exclusions and limitations by type of provider; and

2. A long-term care insurer shall not deny a claim because services are provided in a state other than the state of policy issue under the following conditions, if the state other than the state of policy issue:

a. Does not have the provider licensing, certification, or registration required in the policy and the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or

b. Licenses, certifies or registers the provider under another name; and

(c) This subsection is not intended to prohibit the delivery or issue for delivery of a long-term care policy with territorial limitations.

(3) Extension of benefits.

(a) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization:

1. Began while the long-term care insurance was in force; and

2. Continues without interruption after termination.

(b) The extension of benefits beyond the period the long-term care insurance was in force may be:

1. Limited to the:

a. Duration of the benefit period, if any; or

b. Payment of the maximum benefits; and

2. Subject to:

a. Any policy waiting period; and

b. All other applicable provisions of the policy.

(4) Continuation or conversion. Group long-term care insurance issued in Kentucky on or after July 15, 2002 shall provide a covered individual with a basis for continuation or conversion of coverage.

(a) A basis for continuation shall be identified as a policy provision, which provides for continued coverage under the existing group policy if the coverage would otherwise terminate and be subject to the continued timely payment of premium when due.

1. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy; and

2. The commissioner shall:

a. Make a determination as to the substantial equivalency of benefits as identified in subparagraph 1 of this paragraph; and

b. In making the determination identified in clause a. of this subparagraph, take into consideration the differences between managed-care and nonmanaged-care plans, including:

(i) Provider system arrangements;

(ii) Service availability;

(iii) Benefit levels; and

(iv) Administrative complexity.

(b) A basis for conversion shall be identified as policy provision, which provides that an individual shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability, if the:

1. Individual's coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class; and

2. Individual has been continuously insured under the group policy and any group policy which it replaced, for at least six months immediately prior to termination.

(c)1. A converted policy shall be an individual policy of long-term care insurance that provides benefits identical to or benefits determined by the commissioner to be substantially similar to or in excess of those provided under the group policy from which conversion is made.

2. If the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to the substantial similarity of benefits, shall take into consideration the differences between managed-care and non managed-care plans, including:

a. Provider system arrangements;

b. Service availability;

c. Benefit levels; and

d. Administrative complexity.

(d)1. No later than thirty-one (31) days after termination of coverage under the group policy, an individual who desires a converted policy shall:

a. Make written application for the converted policy; and

b. Pay the first premium that is due, if any.

2. A converted policy shall be:

a. Issued effective on the day following date of termination of coverage under the group policy; and

b. Renewable annually.

(e) The premium for a converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy:

1. From which conversion is made unless the group policy from which conversion is made replaced previous group coverage; or

2. Replaced, if the group policy from which conversion is made replaced previous group coverage.

(f) Continuation of coverage or issuance of a converted policy shall be mandatory, except if:

1. Termination of group coverage resulted from an individual's failure to make a required payment of premium or contribution when due; or

2. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the date of termination of coverage:

a. Providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

b. The premium for which is calculated in a manner consistent with the requirements of paragraph (e) of this subsection.

(g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if:

1. The benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses; and

2. The converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) A converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(i) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(5) Discontinuance and replacement.

(a) If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to persons covered under the previous group policy on its date of termination; and

(b) Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:

1. Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced, and

2. Vary or depend on the individual's:

a. Health or disability status;

b. Claim experience; or

c. Use of long-term care services.

(6)(a) The premium charged to an insured for long-term care

insurance shall not increase due to the:

1. Increasing age of the insured at ages beyond sixty-five (65); or

2. Duration that the insured has been covered under the policy.

(b)1. The purchase of additional coverage shall not be considered a premium rate increase; and

2. For the calculation required under Section 25(6) of this administrative regulation, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(c)1. A reduction in benefits shall not be considered a premium change; and

2. for the calculation required under Section 25(6) of this administrative regulation, the initial annual premium shall be based on the reduced benefits

(7) Electronic enrollment for group policies

(a) A requirement that a signature of a group long-term care insurance insured be obtained by an agent or insurer shall be deemed satisfied if:

1. The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer;

2. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the:

a. Accuracy, retention, and prompt retrieval of records; and

b. Maintenance of the confidentiality of personally-identifiable information pursuant to 806 KAR 3:210, 3:220 and 3:230.

(b) A verification of enrollment information shall be provided to an enrollee.

(c) Upon request of the commissioner, an insurer shall make available records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

Section 4. Unintentional Lapse. An insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination.

1. An individual long-term care policy or certificate shall not be issued until the insurer has received from the applicant a written:

a. Designation of at least one (1) person, in addition to the applicant, who shall receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or

b. Waiver:

1. Dated and signed by the applicant; and

2. Electing not to designate additional persons to receive notice.

3. Designation shall not constitute acceptance of any liability of the third party for services provided to the insured.

4. The form used for the written designation shall provide space clearly designated for listing at least one (1) person.

5. The designation shall include each person's full name and home address.

6. If an applicant elects not to designate an additional person, the waiver shall contain the language as established in HIPMC-LTC-10.

7. The insurer shall notify the insured of the right to change a written designation, at least once every two (2) years.

(b)1. If a policy holder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the policy or certificate shall not be required to meet the requirements of paragraph (a) of this subsection until sixty (60) days after the policyholder or certificate holder is no longer on the payment plan.

2. The application or enrollment form for the policy or certificate shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium.

1. An individual long-term care policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and any person designated pursuant to paragraph (a) of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination.

2. Notice of lapse or termination shall:

a. Be given by first class U.S. mail, postage prepaid;

b. Not be given until thirty (30) days after a premium is due and unpaid; and

c. Be deemed to have been given as of five (5) days after the date of mailing.

(2) Reinstatement.

(a) In addition to meeting the requirements of subsection (1) of this section, a long-term care insurance policy or certificate shall include a provision for reinstatement of coverage:

1. When lapse occurs; and

2. If the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.

(b) The reinstatement of coverage option as identified in paragraph (a) of this subsection shall:

1. Be available to the insured if requested within five (5) months after termination; and

2. Allow for the collection of past due premium, if appropriate.

(c) The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria for cognitive impairment or loss of functional capacity as established in the policy and certificate.

Section 5. Required Disclosure Provisions. (1) Renewability.

(a) An individual long-term care insurance policy shall contain a renewability provision, which shall:

1. Be appropriately captioned;

2. Appear on the first page of the policy; and

3. State clearly that the coverage is guaranteed renewable or noncancellable.

(b) Paragraph (a) of this subsection shall not apply to a life insurance policy with a long-term care insurance rider:

1. Which does not contain a renewability provision; and

2. Under which the right to nonrenew is reserved solely to the policyholder.

(c) Except for a long-term care insurance policy for which an insurer does not have the right to change the premium, a long-term care insurance policy or certificate shall include a statement that premium rates may change.

(2) Riders and endorsements.

(a) Except for a rider or endorsement by which an insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, a rider or endorsement added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduces or eliminates benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) Except for increases in benefits or coverage that are required by the Kentucky insurance code, a rider or endorsement shall be agreed to in writing and signed by the insured, if the rider or endorsement:

1. Is issued after the date of policy issue; and

2. Increases benefits or coverage with a concomitant increase in premium during the policy term.

(c) If a separate additional premium is charged for benefits provided in connection with a rider or endorsement, the premium charged shall be disclosed in the policy, rider, or endorsement.

(3) Payment of benefits. A long-term care insurance policy which provides payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include:

(a) A definition of these terms or words; and

(b) An explanation of these terms or words in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations, which apply to preexisting conditions, the limitations shall:

(a) Appear as a separate paragraph of the policy or certificate; and

(b) Labeled as Preexisting Condition Limitations.

(5) Other limitations or conditions on eligibility for benefits. Except for limitations or conditions prohibited in KRS 304.14-615(4)(b), a long-term care insurance policy or certificate containing a limitation or condition for eligibility shall:

(a) Provide a description of the limitations or conditions, includ-

ing any required number of days of confinement, in a separate paragraph of the policy or certificate; and

(b) Label the paragraph as established in paragraph (a) of this subsection as "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of tax consequences. A disclosure statement, as identified in paragraph (a) of this subsection, shall be required for a life insurance policy which provides an accelerated benefit for long-term care.

(a) The disclosure statement shall:

1. Be required:

a. Upon application for the policy or rider; and

b. When the accelerated benefit payment request is submitted;

2. Disclose that:

a. Receipt of the benefits may be taxable; and

b. Assistance from a personal tax advisor is recommended, and

3. Be prominently displayed on the first page of the:

a. Policy or rider; and

b. Documents related to the policy or rider.

(b) This subsection shall not apply to a qualified long-term care insurance contract.

(7) Benefit triggers.

(a)Activities of daily living and cognitive impairment shall be:

1. Used to measure an insured's need for long-term care;

2. Described in the policy or certificate in a separate paragraph; and

3. Labeled "Eligibility for the Payment of Benefits".

(b) Any benefit triggers not identified in paragraph (a) of this subsection shall also be explained in the benefit triggers section of the policy or certificate.

(c) If benefit triggers differ for different benefits, an explanation of the trigger shall accompany each benefit description.

(d) If certification of a certain level of functional dependency by an attending physician or other specified person is required for determination of eligibility for benefits, the required certification shall be disclosed.

(8) A qualified long-term care insurance contract shall include a disclosure statement:

(a) In the policy and as established in Outline of Coverage, HIPMC-LTC-7; and

(b) Which states that the policy is intended to be a qualified long-term care insurance contract under 29 U.S.C. 7702B(b).

(9) A nonqualified long-term care insurance contract shall include a disclosure statement:

(a) In the policy and as established in Outline of Coverage, HIPMC-LTC-7; and

(b) Which states that the policy is not intended to be a qualified long-term care insurance contract.

Section 6. Required Disclosure of Rating Practices to Consumers. (1) Except as provided in subsection (2) of this section, this section shall apply to any long-term care policy or certificate issued in Kentucky beginning January 15, 2003.

(2) For a certificate issued on or after July 15, 2002, under a group long-term care insurance policy as identified in KRS 304.14-600(5)(a), which was in force July 15, 2002, the provisions of this section shall apply on the policy anniversary following July 15, 2003.

(3) Except for a policy for which no applicable premium rate or rate schedule increases may be made, an insurer shall provide the information listed in this subsection to the applicant when application or enrollment occurs, unless the method of application does not allow for delivery at that time:

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions and the policyholder's or certificate holder's option if a premium rate is revised;

(c) The premium rate or rate schedules applicable to the applicant that shall be in effect until a request for an increase is made;

(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:

1. A description of when premium rate or rate schedule adjustments shall be effective, including the next anniversary date or billing date; and

2. If the premium rate or rate schedule is changed, the right to a revised premium rate or rate schedule as provided in paragraph (c) of this subsection; and

(e)1. Information regarding each premium rate increase on the policy form or similar policy forms during the past ten (10) years for Kentucky or any other state that, at a minimum, shall identify:

a. The policy forms for which premium rates have been increased,

b. The calendar years when the form was available for purchase, and

c. The amount or percent of each increase. The percentage may be expressed as:

(i) A percentage of the premium rate prior to the increase; or

(ii) If the rate increase is variable by rating characteristics, the minimum and maximum percentages.

2. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

3. An insurer may exclude, from the disclosure premium rate increases that occurred prior to the acquisition of and only apply to:

a. Blocks of business acquired from other nonaffiliated insurers; or

b. Long-term care policies acquired from other nonaffiliated insurers.

4. If an acquiring insurer files for a rate increase on a long-term care policy form acquired from a nonaffiliated insurer or block of policy forms acquired from a nonaffiliated insurer and if those increases occurred prior to the acquisition on or before the later of July 15, 2002 or the end of a twenty-four (24) month period following the acquisition of the block of business or policies, the acquiring insurer may exclude that rate increase from the disclosure.

a. The rate increase that may be excluded pursuant to this subparagraph shall be disclosed by the nonaffiliated selling company in accordance with subparagraph 1 of this paragraph; and.

b. If the acquiring insurer files for a subsequent rate increase, within the twenty-four (24) month period, on the same policy form acquired from a nonaffiliated insurer or block of policy forms acquired from a nonaffiliated insurer, the acquiring insurer shall make the disclosures required by this paragraph, including disclosure of the earlier rate increase.

(4) If the method of application does not allow for delivery when application or enrollment occurs, the information listed in subsection (3)(a) and (e) of this section shall be delivered to the applicant no later than the date the policy or certificate is delivered.

(5) An applicant shall sign an acknowledgement that the insurer made the disclosure required under subsection (3)(a) and (e) of this section:

(a) When application occurs; or

(b) If the method of application does not allow signature when application occurs, no later than the delivery date of the policy or certificate.

(6) An insurer shall use forms HIPMC-LTC-1 and HIPMC-LTC-2, to comply with the requirements of subsections (3) and (5) of this section.

(7) An insurer shall provide notice of an upcoming premium rate schedule increase to a policyholder or certificate holder, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer.

(8) The notice required, pursuant to subsection (7) of this section, shall include the information required by subsection (3) of this section when the rate increase is implemented.

Section 7. Initial Filing Requirements. (1) This section shall apply to a long-term care policy issued in Kentucky beginning January 15, 2003.

(2) An insurer shall provide the information listed in this subsection to the commissioner in accordance with the time period established in KRS 304.14-120(2), including:

(a) A copy of the disclosure documents required in Section 6 of this administrative regulation; and

(b) An actuarial certification consisting of at least the following:

1. A statement that the:

a. Initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience; and

b. Premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

2. A statement that the policy design and coverage have been reviewed and considered;

3. A statement that the underwriting and claims adjudication processes have been reviewed and considered;

4. A complete description of the basis for contract reserves that are anticipated to be held under the form, including:

a. Sufficient detail or sample calculations to depict completely the reserve amounts to be held;

b. A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

c. A statement that except for the attained-age rating, if permitted, the net valuation premium for renewal years does not increase; and

d. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses, or if the statement cannot be made, a complete description of the situations in which this does not occur;

(i) An aggregate distribution of anticipated issues may be used if the underlying gross premiums maintain a reasonably consistent relationship; and

(ii) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration as identified under subsection (3) of this section based on a standard age distribution; and

5.a. A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms currently also available from the insurer except for reasonable differences attributable to benefits; or

b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums which shall include:

(a) Premium and claim experience on similar policy forms, adjusted for any premium and benefit differences;

(b) Relevant and creditable data from other studies; or

(c) Premium and claims experience, and relevant and creditable data as identified in paragraphs (a) and (b) of this subsection.

Section 8. Prohibition Against Postclaims Underwriting. (1) Except for an application which is guaranteed issue, an application for a long-term care insurance policy or certificate shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks if the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the medication that has been prescribed.

(b) If at application, the medications listed in the application were known by the insurer, or should have been known, to be directly related to a medical condition for which coverage would be denied, the policy or certificate shall not be rescinded for that condition.

(3) Except for a policy or certificate which is guaranteed issue:

(a) The language shall be conspicuous and located in close proximity to the applicant's signature block on an application for a long-term care insurance policy or certificate: "Caution: If your answers on this application, to the best of your knowledge and belief, are incorrect or untrue, (insurer name) has the right to deny benefits or rescind your policy."

(b) The language identified in HIPMC-LTC-10, or substantially similar language, shall be clear and easy to read on the long-term care insurance policy or certificate when it is delivered.

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following:

1. A report of a physical examination;

2. An assessment of functional capacity;

3. An attending physician's statement; or

4. A copy of the medical records.

(4) A copy of the completed application or enrollment form, as applicable, shall be delivered to the insured no later than the delivery date of the policy or certificate unless it was retained by the applicant at application.

(5) An insurer issuing long-term care insurance benefits shall:

(a) Except for a policy or certificate rescission voluntarily effectuated by the insured, maintain a record of all policy or certificate rescissions, both Kentucky and countrywide; and

(b) Annually submit the information identified in paragraph (a) of this subsection to the commissioner using HIPMC-LTC-3.

Section 9. Minimum Standards for Home Health and Community Care Benefits in Long-term Care Insurance Policies. (1) A long-term care insurance policy or certificate which provides benefits for home health care or community care services shall not limit or exclude benefits by:

(a) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

(b) Requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered;

(c) Limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) Requiring that a nurse or therapist provide services covered by the policy that may be provided by a:

1. Home health aide; or

2. Other licensed or certified home care worker acting within the worker's scope of licensure or certification;

(e) Excluding coverage for personal care services provided by a home health aide;

(f) Requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) Requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) Limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) Excluding coverage for adult day care services.

(2)(a) A long-term care insurance policy or certificate which includes home health or community care services shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year's coverage available for nursing home benefits under the policy or certificate, when covered home health or community care services are received.

(b) The requirement identified in paragraph (a) of this subsection shall not apply to a policy or certificate issued to a resident of a continuing care retirement community.

(3) In determining maximum coverage under the terms of a policy or certificate, home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate.

Section 10. Requirement to Offer Inflation Protection. (1) In addition to any other inflation protection, an insurer offering a long-term care insurance policy shall offer to the policyholder, an option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy and when the policy is purchased, the option to purchase a policy with an inflation protection feature that is no less favorable than one (1) of the following:

(a) Increases benefit levels annually in a manner that increases are compounded annually at a rate no less than five (5) percent;

(b) If the option for the previous period has not be declined, guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status. The amount of the additional benefit shall not be less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five (5) percent for the period;

1. Beginning with the purchase of the existing benefit; and
2. Extending until the year in which the offer is made; or

(c)1. Covers a specified percentage of actual or reasonable charges; and

2. Does not include a maximum specified indemnity amount or limit.

(2) If a long-term care policy is issued to a:

(a) Group, the required offer in subsection (1) of this section shall be made to the group policyholder; or

(b) Group as defined in KRS 304.14-600(5)(d) other than to a continuing care retirement community, the required offer in Subsection (1) of this section shall be made to each proposed certificate holder.

(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4) An insurer:

(a) Shall disclose, in or with the outline of coverage:

1. A graphic comparison of the benefit levels of a policy, which:

a. Increases benefits over the policy period; and

b. Does not increase benefits over the policy period; and

2. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) Shall show the benefit levels as identified in subparagraph 1 of this paragraph for a period of twenty (20) years or more.

(c) May use a reasonable hypothetical, or a graphic demonstration for the disclosure identified in paragraphs (a) and (b) of this subsection.

(5) Inflation protection benefit increases under a policy which contains these benefits shall continue regardless of an insured's:

(a) Age;

(b) Claim status;

(c) Claim history or

(d) Length of time the person has been insured under the policy.

(6) An offer of inflation protection which provides automatic benefit increases shall:

(a) Include an offer of a premium which the insurer expects to remain constant; and

(b) Disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as identified in subsection (1)(a) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

(b) As established in HIPMC-LTC-10, the rejection of inflation protection, which may be either in the application or in a separate form, shall be considered a part of the application.

Section 11. Requirements for Application Forms and Replacement Coverage. (1)(a) Application forms shall include questions designed to obtain information to determine if:

1. The applicant has another long-term care insurance policy or certificate in force on the date of application; or

2. A long-term care insurance policy or certificate is intended to replace:

a. An accident and sickness policy or certificate currently in force; or

b. A long-term care policy or certificate currently in force.

(b) A supplementary application or other form, containing the questions required by this section, may be used if signed by the:

1. Applicant; and

2. Agent, if coverage is sold by an agent.

(c) If a replacement policy is issued to a group, as defined by KRS 304.14-600(5)(a), the following questions shall be included and may be modified only to the extent necessary to obtain information about a health or long-term care insurance policy other than the group policy being replaced if the certificate holder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force, including a health-care service contract or health maintenance organization contract?

2. Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

a. If yes, with which company?

b. If that policy lapsed, when did it lapse?

3. Are you covered by Medicaid?

4. Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?

(2) An agent shall list other health insurance policies sold by the agent to the applicant which:

(a) Are currently in force; and

(b) Were sold in the past five (5) years and are no longer in force.

(3) Solicitations other than direct response.

(a) Upon determining that a sale will involve replacement, an insurer, which does not use direct response solicitation methods or an agent of the insurer, shall provide the applicant with a notice regarding replacement of accident and sickness or long-term care coverage as established in the HIPMC-LTC-8.

(b)1. One (1) copy of the notice identified in this subsection shall be retained by the applicant; and

2. A copy of the notice shall be signed by the applicant and retained by the insurer.

(c) The notice, as identified in this subsection shall be provided prior to issuance or delivery of the individual long-term care insurance policy.

(4) Direct response solicitations. An insurer which uses direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant:

(a) If it is determined that a sale will involve a replacement;

(b) As established in the HIPMC-LTC-9.

(5)(a) If replacement is intended, the replacing insurer shall provide written notification to the existing insurer of the proposed replacement.

(b) The existing policy shall be identified by the:

1. Insurer;

2. Name of the insured; and

3.a. Insured's policy number; or

b. Insured's address, including ZIP code.

(c) The notice shall be delivered within five (5) business days of the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(6)(a) A life insurance policy which accelerates benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy.

(b) If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of KRS 304.12-030 and 806 KAR 12:080.

(c) If a life insurance policy which accelerates benefits for long-term care is replaced by another life insurance policy which accelerates benefits for long-term care, the replacing insurer shall comply with the:

1. Long-term care replacement requirements as identified in paragraph (a) of this subsection; and

2. Life insurance replacement requirements as identified in paragraph (b) of this subsection.

Section 12. Reporting Requirements. (1) For each agent, an insurer shall maintain records, including an agent's amount of:

(a) Replacement sales as a percent of the agent's total annual sales; and

(b) Lapses of long-term care insurance policies sold as a percent of the agent's total annual sales.

(2) An insurer shall use the HIPMC-LTC-11 to report to the department annually by June 30 the ten (10) percent of the insurer's agents with the greatest percentages of lapses and replacements based upon information identified in subsection (1) of this section.

(3) Reported replacement and lapse rates shall not alone constitute a violation of the Kentucky insurance code or necessarily imply wrongdoing. The reports, as referenced in subsections (1) and (2) of this section, shall be used by the department to conduct a comprehensive review of agent activities regarding the sale of long-term care insurance.

(4) An insurer shall report to the department annually by June

30 using HIPMC-LTC-11, the number of:

(a) Lapsed long-term care insurance policies as a percent of the insurer's total:

1. Annual sales; and

2. Number of long-term care insurance policies in force at the end of the preceding calendar year; and

(b) Replacement long-term care insurance policies sold as a percent of the insurer's total:

1 Annual sales; and

2. Number of long-term care insurance policies in force as of the preceding calendar year.

(5) For qualified long-term care insurance contracts an insurer shall file a report with the department annually by June 30, the number of claims denied for each class of business, expressed as a percentage of claims denied, using the HIPMC-LTC-4.

(6) Reports required in this section shall include information on a statewide basis.

Section 13. Licensing. An agent shall not be authorized to market, sell, solicit, or negotiate with respect to long-term care insurance except as authorized by KRS 304.9-080(1).

Section 14. Discretionary Powers of Commissioner. Upon written request and after an administrative hearing pursuant to KRS 304.2-310, the commissioner may issue an order to modify or suspend an identified provision of this administrative regulation regarding a long-term care insurance policy or certificate upon a written finding that:

(1) The modification or suspension is in the best interest of the insureds;

(2) The purposes to be achieved may not be effectively or efficiently achieved without the modification or suspension; and

(3)(a) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;

(b)1. The policy or certificate is issued to residents of:

a. A life care or continuing care retirement community; or

b. A residential community for the elderly other than a life care or continuing care retirement community; and

2. The modification or suspension is reasonably related to the special needs or nature of the community as identified in subparagraph 1 of this paragraph; or

(c) The modification or suspension is necessary to permit long-term care insurance to be sold as part of or in conjunction with another insurance product.

Section 15. Reserve Standards. (1)(a) If long-term care benefits are provided through the acceleration of benefits under group or individual life insurance policy or rider to a group or individual life insurance policy, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.

(b) If the policy or rider is in claim status, claim reserves shall be established.

(c) Except for voluntary termination rates or as established in paragraph (d), reserves for a policy or rider subject to the requirements of this subsection shall be based on:

1. The multiple decrement model utilizing relevant decrements; or

2. Single decrement approximations, if the:

a. Calculation produces essentially similar reserves;

b. Reserve is clearly more conservative; or

c. Reserve is immaterial.

(d) Calculations may consider the reduction in life insurance benefits due to the payment of long-term care benefits, except the reserves for the long-term care benefit and the life insurance benefit shall not be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(e) In the development and calculation of reserves for a policy and rider subject to the requirements of this subsection, consideration shall be given to the applicable policy provisions, marketing methods, administrative procedures, and other considerations which have an impact on projected claim costs, including:

1. Definition of insured events;

2. Covered long-term care facilities;

3. Existence of home convalescence care coverage;

4. Definition of facilities;

5. Existence or absence of barriers to eligibility;

6. Premium waiver provision;

7 Renewability;

8 Ability to raise premiums;

9. Marketing method;

10. Underwriting procedures;

11. Claims adjustment procedures;

12 Waiting period;

13. Maximum benefit;

14. Availability of eligible facilities;

15. Margins in claim costs;

16 Optional nature of benefit;

17 Delay in eligibility for benefit;

18 Inflation protection provisions; and

19 Guaranteed insurability option.

(f) An applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) If long-term care benefits are not provided through the acceleration of benefits under a group or individual life policy or rider to this policy, reserves shall be determined in accordance with KRS 304.6-070.

Section 16. Loss Ratio. (1) Except for a policy or certificate that is subject to Sections 7 and 17 of this administrative regulation, a long-term care insurance policy or certificate shall comply with this section.

(2)(a) Benefits under a long-term care insurance policy shall be deemed reasonable in relation to premiums if the expected loss ratio is:

1. At least sixty (60) percent; and

2 Calculated in a manner for adequate reserving of the long-term care insurance risk.

(b) In evaluating the expected loss ratio, consideration shall be given to relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;

2 The period for which rates are computed to provide coverage;

3 Experienced and projected trends;

4. Concentration of experience within early policy duration;

5. Expected claim fluctuation;

6. Experience refunds, adjustments, or dividends;

7. Renewability features;

8. Expense factors, as appropriate;

9. Interest;

10. Experimental nature of the coverage;

11. Policy reserves;

12. Mix of business by risk classification; and

13 Product features including:

a. Long elimination periods;

b. High deductibles; and

c. High maximum limits.

(3) Subsection (2) of this section shall not apply to a life insurance policy which accelerates benefits for long-term care.

(4) A life insurance policy which funds long-term care benefits entirely by accelerating the death benefit shall be considered to provide reasonable benefits in relation to premiums paid, if the policy complies with the following:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed to be no less than the minimum guaranteed interest rate for cash value accumulations without long-term care as identified in the policy;

(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of KRS 304.15-310;

(c) The policy meets the following disclosure requirements:

1. If an application for a long-term care insurance contract or certificate is approved, the insurer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval;

2. When the policy is delivered, a policy summary shall be

delivered in accordance with KRS 304.14-615(9);

3. If the long-term care inflation protection option required by Section 10(1) of this administrative regulation is not available, the policy summary shall state that long-term care inflation protection option required by Section 10(1) of this administrative regulation is not available under the policy;

4. The policy summary required by subparagraph 2 of this paragraph may be incorporated into a basic illustration that meets the requirements of 806 KAR 12:140, Sections 8 and 9; and

5. If a long-term care benefit, funded through a life insurance product by the acceleration of the death benefit, is in the benefit payment status, a monthly report shall be provided in accordance with KRS 304.14-615(10).;

(d) Any policy illustration meets the applicable requirements of 806 KAR 12:140, Section 3; and

(e) An actuarial memorandum is filed with the department, which includes:

1. A description of the basis on which the long-term care rates were determined;

2. A description of the basis for the reserves;

3. A summary of the:

a. Type of policy;

b. Benefits;

c. Renewability;

d. General marketing method; and

e. Limits on ages of issuance;

4 a. A description and a table of each actuarial assumption used; and

b. For expenses, shall include the percent of premium dollars per policy and dollars per unit of benefits, if any;

5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

6. The estimated average annual premium per policy and the average issue age;

7.a. A statement that

(i) Indicates if underwriting is performed upon application; and

(ii) If underwriting is used, includes a description of the type of underwriting used, including medical underwriting or functional assessment underwriting; and

b. If related to a group policy, the statement as established in clause a of this paragraph shall indicate:

(i) If the enrollee or a dependent shall be underwritten; and

(ii) When underwriting shall occur; and

8. For active lives and insureds in long-term care status, a description of the long-term care policy provision on:

a. Required premiums;

b. Nonforfeiture values; and

c. Reserves on the underlying life insurance policy.

Section 17. Premium Rate Schedule Increases. (1)(a) Except as required in paragraph (b) of this subsection, this section shall apply to a long-term care policy or certificate issued in Kentucky beginning January 15, 2003.

(b) For a certificate issued on or after the effective date of this administrative regulation under a group long-term care insurance policy in force on July 15, 2002, the provisions of this section shall apply on the policy anniversary following July 15, 2003.

(2) An insurer shall provide a notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least thirty (30) days prior to the notice issued to policyholders, which shall include:

(a) Information required by Section 6 of this administrative regulation;

(b) Certification by a qualified actuary that:

1. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated; and

2. The premium rate filing is in compliance with the provisions of this section;

(c) An actuarial memorandum justifying the rate schedule change request which includes

1. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

a. Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;

b. Unless the rate increase is an exceptional increase, the projections shall include the development of the lifetime loss ratio;

c. The projections shall demonstrate compliance with subsection (3) of this section; and

d. For exceptional increases:

(i) The projected experience shall be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(ii) If the commissioner makes a determination as required in subsection (12)(b) of this section that offsets may exist, the insurer shall use appropriate net projected experience;

2. If the rate increase triggers the contingent benefit upon lapse, disclosure of how reserves have been incorporated in this rate increase;

3. Disclosure of the analysis performed to determine:

a. Why a rate adjustment is necessary;

b. Which pricing assumptions were not realized and why; and

c. What actions taken by the company have been relied on by the actuary;

4. A statement that consideration was given to:

a. Policy design;

b. Underwriting; and

c. Claims adjudication practices; and

5. If necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates;

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) Sufficient information for review and approval of the premium rate schedule increase by the commissioner.

(3) Premium rate schedule increases shall be determined in accordance with the following requirements:

(a) Exceptional increases shall provide that seventy (70) percent of the present value of projected additional premiums from the exceptional increase shall be returned to policyholders in benefits;

(b) Premium rate schedule increases shall be calculated in a manner that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:

1. The accumulated value of the initial earned premium multiplied by fifty-eight (58) percent;

2. Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;

3. The present value of future projected initial earned premiums multiplied by fifty-eight (58) percent; and

4. Eighty-five (85) percent of the present value of future projected premiums not included in subparagraph 3 of this paragraph on an earned basis;

(c) If a policy form has exceptional and other increases, the values in paragraph (b)2 and 4 of this subsection shall also include seventy (70) percent for exceptional rate increase amounts; and

(d)1. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as required by 806 KAR 6:080, Section 1(3)(a); and

2. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(4) For each rate increase implemented, an insurer shall file for review by the commissioner updated projections, as identified in subsection (2)(c)1 of this section, annually for the next three (3) years, which shall include a comparison of actual results to projected values.

(a) If actual results are not consistent with projected values from prior projections, the commissioner may extend the period to greater than three (3) years.

(b) For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(5)(a) If a premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as established in subsection (2)(c)1 of this section, shall be filed for review by the commissioner every five (5) years following the end of the required period identified in subsection (4) of this section.

(b) For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(6)(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (3) of this section, the commissioner may require the insurer to implement any of the following:

1. Premium rate schedule adjustments; or

2. Measures other than premium rate schedule adjustments to reduce the difference between the projected and actual experience.

(b) In determining if the actual experience adequately matches the projected experience, consideration shall be given to subsection (2)(c)5 of this section, if applicable.

(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse:

(a) The insurer shall file:

1. The original anticipated lifetime loss ratio and the premium rate schedule increase that would have been calculated according to subsection (3) of this section had the greater of the original anticipated lifetime loss ratio or fifty-eight (58) percent been used in the calculations described in subsection (3)(b)1 and 3 of this section; and

2.a. A plan, subject to commissioner's approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or

b. Documentation, which demonstrates that appropriate administration and claims processing have been implemented or are in effect; or

(b) If an insurer does not comply with subparagraph 2 of paragraph (a) of this subsection, the commissioner may impose the condition identified in subsection (8) of this section.

(8)(a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapse rates have occurred or are anticipated:

1. The rate increase is not the first rate increase requested for the specific policy form or forms;

2. The rate increase is not an exceptional increase; and

3. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) If significant adverse lapse rates have occurred, are anticipated in the filing, or are evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists.

(c) Following a determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to insureds subject to the rate increase the option to replace existing coverage with one (1) or more comparable products offered by the insurer or an affiliate of the insurer.

1. The offer shall:

a. Be subject to the approval of the commissioner;

b. Be based on actuarially sound principles;

c. Not be based on attained age; and

d. Provide maximum benefits under a new policy, which shall be:

(i) Accepted by an insured; and

(ii) Reduced by comparable benefits already paid under the existing policy.

2.a. The insurer shall maintain the experience of all replacement insureds separate from the experience of insureds originally issued the policy forms.

b. If a rate increase on the policy form is requested, the rate increase shall be limited to the lesser of:

(i) The maximum rate increase which was determined on the basis of the combined experience; and

(ii) The maximum rate increase which was determined on the basis of the experience of the insureds originally issued the form plus ten (10) percent.

(9) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may impose the provisions of subsection (8) of this section and prohibit the insurer from:

(a) Filing and marketing comparable coverage for a period of up to five (5) years; or

(b) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(10) Subsections (1) through (9) of this section shall not apply to a policy for which the long-term care benefits provided by the policy are incidental, if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed to be no less than the minimum guaranteed interest rate for cash value accumulations without long-term care as identified in the policy;

(b) The portion of the policy which provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements, as applicable, in any of the following:

1. KRS 304.15-310;

2. KRS 304.15-315;

3. 806 KAR 15:010; or

4. 806 KAR 15:030;

(c) The policy meets the disclosure requirements of Section 16(4)(c) of this administrative regulation;

(d) The portion of the policy, which provides insurance benefits other than long-term care coverage meets the requirements, as applicable, in the following:

1. Policy illustrations as required in 806 KAR 12:140; and

2. Disclosure requirements as required in 806 KAR 15:010 and 15:030; and

(e) An actuarial memorandum is filed with the department, which includes:

1. A description of the basis for determination of the long-term care rates;

2. A description of the basis for the reserves;

3. A summary of the:

a. Type of policy;

b. Benefits;

c. Renewability;

d. Marketing method, and

e. Limits on ages of issuance;

4. A description and table of each actuarial assumption used, including expenses, for which an insurer shall include:

a. Percent of premium dollars per policy; and

b. Dollars per unit of benefits, if any;

5. A description and table of the:

a. Anticipated policy reserves for active lives; and

b. Additional reserves to be held in each future year for active lives;

6 a. The estimated average annual premium per policy; and

b. The average issue age;

7. A statement regarding the performance or nonperformance of underwriting at application:

a. The statement shall:

(i) Indicate whether underwriting is used; and

(ii) If underwriting is used, include a description of the type of

underwriting used, including medical underwriting or functional assessment underwriting; and

b. If the statement relates to a group policy, the statement shall indicate:

(i) If the enrollee or dependent will be underwritten; and

(ii) When underwriting will occur; and

8. A description of the effect of the long-term care policy provision on the:

a. Required premiums;

b. Nonforfeiture values; and

c. For active lives and for insureds in long-term care claim status, reserves on the underlying insurance policy.

(11) Subsections (6) and (8) of this section shall not apply to insurance policies issued to a group identified in KRS 304.14-600(5)(a) if the:

(a)1. Policies insure 250 or more persons; and

2. Policyholder has 5,000 or more eligible employees of a single employer; or

(b) The policyholder, and not the certificate holder, pays a material portion of the premium, which shall not be less than twenty (20) percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

(12) For an exceptional increase, the commissioner:

(a) May request a review of the basis for a request that an increase be considered an exceptional increase by:

1. An independent actuary; or

2. A professional actuarial body; and

(b) In determining that the necessary basis for an exceptional increase exists, shall determine any potential offsets to higher claim costs.

(13) Except as required in this section, an exceptional increase is subject to the same requirements as any premium rate schedule increase.

Section 18. Filing Requirement for a Group Policy Issued in Another State. Prior to offering group long-term care insurance issued in another state to a resident of Kentucky pursuant to KRS 304.14-610, an insurer shall file with the commissioner evidence that the group policy or certificate issued under the group policy has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to requirements in Kentucky.

Section 19. Filing Requirements for Advertising. (1) An insurer providing long-term care insurance or benefits in Kentucky shall provide a copy of a long-term care insurance advertisement intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with this administrative regulation and KRS 304.12-020, 304.14-120, 304.14-620, and 806 KAR 12:010, 806 KAR 14:005, 806 KAR 14:007 Section 5(2) and this administrative regulation;

(2) An advertisement shall be retained by the insurer for at least five (5) years from the date the advertisement was first used.

(3) The commissioner may exempt advertising from the requirements of this section pursuant to KRS 304.14-120(4).

Section 20. Standards for Marketing. (1) An insurer marketing long-term care insurance coverage in Kentucky, directly or through its agents, shall:

(a) Establish marketing procedures and agent training requirements to assure that:

1. Marketing activities, including a comparison of policies, by its agent, shall be fair and accurate; and

2. Excessive insurance shall not be sold or issued.

(b) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy, the notice as established in HIPMC-LTC-10.

(c) Provide to the applicant a copy of each disclosure form required in Section 6(5) and (6) of this administrative regulation.

(d) Inquire and make every reasonable effort to identify:

1. If a prospective applicant or enrollee for long-term care insurance has accident and sickness or long-term care insurance; and

2. The type and amount of insurance identified in subparagraph 1 of this paragraph.

(e) For a qualified long-term care insurance contract, not be required to make an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance, in accordance with paragraph (d) of this section.

(f) Establish auditable procedures for verifying compliance with the requirements of this subsection.

(g) At solicitation, provide:

1. Written notice to the prospective policyholder and certificate holder that the Kentucky State Health Insurance Assistance Program is available; and

2. The address and telephone number of the program as identified in subparagraph 1 of this paragraph.

(h) For a long-term care insurance policy and certificate, use the terms, noncancellable or level premium, if the policy or certificate conforms to Section 3(1)(c) and (d) of this administrative regulation.

(i) Provide an explanation of:

1. Contingent benefit upon lapse as described in Section 25(6)(c) of this administrative regulation; and

2. If applicable, the additional contingent benefit upon lapse provided to all policies with fixed or limited premium paying periods as described in Section 25(6)(d).

(2) An insurer shall:

(a) Comply with the requirements of KRS Chapter 304.12; and

(b) Not perform the following acts and practices:

1. Twisting;

2. High pressure tactics;

3. Cold lead advertising; and

4. Misrepresentation.

(3)(a) To comply with the requirements of this subsection, an association, as defined in KRS 304.14-600(5)(b) shall have the primary responsibility of educating its members concerning long-term care issues in general:

1. If endorsing or selling long-term care insurance; and

2. To ensure that its members make informed decisions.

(b) An association shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by the association to ensure that its members receive a balanced and complete explanation of the features of the policy or certificate that is endorsed or sold.

(c) An insurer shall file with the department the following:

1. An insurance policy and, if applicable, a certificate;

2. An outline of coverage, which corresponds to the filed policy or certificate; and

3. Advertisements as requested by the department pursuant to Section 18(1) of this administrative regulation.

(d) An association shall disclose in a long-term care insurance solicitation:

1. The specific nature and amount of the compensation arrangements, including fees, commissions, administrative fees, and other forms of financial support, which the association receives from endorsement or sale of the policy or certificate to its members; and

2. A brief description of the process used to select the policy and the insurer, which issued the policy.

(e) If an association and insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to the association members.

(f) The board of directors of an association selling or endorsing a long-term care insurance policy or certificate shall review and approve the:

1. Insurance policy; and

2. Compensation arrangements made with the insurer.

(g) Except for a qualified long-term care insurance contract, an association shall:

1. Upon a decision to endorse a long-term care insurance contract, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to:

a. Conduct an examination of the policy, including its benefits, features, and rates; and

b. Update the examination, if a material change is made to the contract;

2. Actively monitor the marketing efforts of the insurer and its

agents; and

3. Review and approve:

a. Marketing materials; or

b. Insurance communications other than marketing materials, including communications:

(i) Used to promote sales; or

(ii) Sent to members regarding the policy or certificate.

(h) A group long-term care insurance policy or certificate shall not be issued to an association unless the insurer files with the commissioner the information required in this subsection.

(i) Unless an insurer certifies annually that an association has complied with the requirements established in this subsection, an insurer shall not:

a. Issue a long-term care policy or certificate to the association; or

b. Continue to market the policy or certificate.

(j) Failure to comply with the filing and certification requirements of this section shall constitute an unfair trade practice in violation of KRS 304.12-010.

Section 21. Suitability. (1) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

(2) An insurer marketing long-term care insurance shall:

(a) Develop and use suitability standards to determine if the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Train an agent to use the suitability standards identified in paragraph (a) of this paragraph; and

(c) Maintain a copy of the suitability standards, which shall be available for inspection upon request by the commissioner.

(3)(a) To determine if an applicant meets the suitability standards developed by the insurer, the agent and insurer shall develop a procedure, which considers the:

1. Applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

2. Applicant's goals or needs with respect to:

a. Long-term care; and

b. Advantages and disadvantages of insurance to meet the applicant's goals or needs; and

3. Values, benefits, and costs of the applicant's existing insurance, if any, as compared to the values, benefits, and costs of the recommended purchase or replacement.

(b) The insurer and, if an agent is involved, the agent, shall make a reasonable effort to obtain the information identified in paragraph (a) of this subsection using the HIPMC-LTC-1 Long-term Care Insurance Personal Work Sheet, which shall:

1. Be presented to the applicant at or prior to application;

2. Include not less than the information identified in the format of the HIPMC-LTC-1;

3. Be provided in no less than twelve (12) point type; and

4. Be filed with the commissioner.

(c) The insurer may request additional information from the applicant to comply with its suitability standards.

(d) Except for a Long-term Care Personal Work Sheet completed for the sale of employer group long-term care insurance to employees and spouses of employees, a Long-term Care Personal Work Sheet shall be completed and returned to the insurer prior to the insurer's consideration of the applicant for coverage.

(e) An insurer or agent shall not sell or disseminate information obtained from a Long-term Care Personal Work Sheet outside the company or agency.

(4) An insurer shall use the suitability standards as identified in subsection(2) of this section to determine if the issuance of long-term care insurance coverage is appropriate for an applicant.

(5) An agent shall use the suitability standards of an insurer in marketing long-term care insurance.

(6) When the Long-term Care Personal Work Sheet is provided to the applicant pursuant to subsection (3)(b) of this section, the disclosure form entitled Things You Should Know Before You Buy Long-term Care Insurance, HIPMC-LTC-5 shall be provided in at least twelve (12) point type.

(7)(a) If an insurer determines that the applicant does not meet the financial suitability standards, or if the applicant has declined to provide the information as identified in the Long-term Care Personal Work Sheet, the insurer may reject the application or send to the applicant, a:

1. Long-term Care Suitability Letter, HIPMC-LTC-6; or

2. Letter, which is:

a. Similar to the Long-term Care Suitability Letter identified in Subparagraph 1 of this paragraph; and

b. Approved by the commissioner.

(b) If the applicant declined to provide financial information, the insurer may verify the applicant's intent using an alternative method.

(c) The applicant's returned HIPMC-LTC-6 or a record of the alternative method of verification shall be maintained as part of the applicant's file.

(8) For the previous calendar year, an insurer shall report annually by June 30 to the commissioner:

(a) The total number of applications for long-term care insurance received from Kentucky residents;

(b) Of the number reporting in paragraph (a) of this subsection, the number of applicants who:

1. Declined to provide information on the personal worksheet;

2. Did not meet the suitability standards; and

3. Chose to confirm after receiving a suitability letter.

Section 22. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section 23. Availability of New Services or Providers. (1) (a) An insurer shall notify a policyholder of the availability of a new long-term policy product, which provides coverage for new long-term care services or providers material in nature and not previously available to the general public through the insurer.

(b) The notice shall be provided within twelve (12) months of the date the new policy product is made available for sale in Kentucky.

(2) An insurer:

(a) Shall not be required to provide the notification identified in subsection (1) of this section:

1. For a policy issued prior to January 1, 2009; or

2. To a policyholder or certificate holder who:

a. Is currently eligible for benefits:

(i) Within an elimination period; or

(ii) On a claim;

b. Previously had been in claim status; or

c. May not be eligible to apply for coverage due to issue age limitations under the new policy.

(b) To add new services or providers, may require a policyholder to meet eligibility requirements, including:

1. Underwriting; and

2. Payment of the required premium.

(3) The insurer shall make the new coverage available by:

(a) 1. Adding a rider to the existing policy; and

2. Charging a separate premium for the new rider based on the insured's attained age;

(b)1. Exchanging the existing policy or certificate for a different policy or certificate with an issue age based on the present age of the insured; and

2. Recognizing past insured status by granting premium credits, which shall be based on premiums paid or reserves held for the prior policy or certificate, toward the premiums for the new policy or certificate;

(c) Exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged; or

(d) If filed and approved by the commissioner, an alternative program developed by the insurer, which meets the intent of this section.

(4) The cost of a new policy or certificate, as identified in subsection (3)(c) of this section, may recognize the difference in reserves between the:

(a) New policy or certificate; and

(b) Original policy or certificate.

(5) An insurer shall:

(a) Not be required to notify a policyholder of a new proprietary policy product, created and filed for use in a limited distribution channel,

(b) Notify a policyholder of a new proprietary policy product if a new long-term care product, which provides coverage for new long-term care services or providers material in nature, is made available to that limited distribution channel.

(6)(a) A policy issued pursuant to this section shall:

1. Be considered an exchange; and

2. Not be considered a replacement.

(b) An exchange as identified in paragraph (a) of this subsection shall not be subject to:

1. Requirements of Sections 11 and 21 of this administrative regulation; and

2. Reporting requirements of Section 12(1) through (4) of this administrative regulation.

(7) If the policy is:

(a) Offered through an employer, labor organization, professional, trade or occupational association, the notification required in subsection (1) of this section, shall be issued to the offering entity; or

(b) Issued to a group identified in KRS 304.14-600(5)(d), the notification required in Subsection (1) of this Section shall be issued to each certificate holder.

(8)(a) Pursuant to this section, an insurer may offer a policy, rider, certificate or coverage change to a policyholder or certificate holder.

(b) Upon request, a policyholder may apply for currently available coverage, which includes a new service or provider.

(c) To add a new service or provider, an insurer may require a policyholder to meet eligibility requirements, including:

1. Underwriting; and

2. Payment of the required premium.

(9) A life insurance policy or rider, which includes accelerated long-term care benefits, shall not be subject to the requirements of this section.

Section 24. Right to Reduce Coverage and Lower Premiums. (1)(a) A long-term care insurance policy and certificate shall include a provision, which allows the policyholder or certificate holder to reduce coverage and lower the policy or certificate premium in at least one (1) of the following ways:

1. Reducing the maximum benefit; or

2. Reducing the daily, weekly or monthly benefit amount.

(b) An insurer may offer a reduction option not identified in paragraph (a) of this subsection, which is consistent with the:

1. Policy or certificate design; or

2. The insurer's administrative processes.

(2) The provision, identified in subsection (1) of this section, shall include:

(a) A description of the ways in which coverage may be reduced; and

(b) The process for requesting and implementing a reduction in coverage.

(3) The age used to determine a premium for the reduced coverage shall be based on the age used to determine a premium for the current coverage.

(4) An insurer may limit a reduction in coverage to a plan or option:

(a) Available for that policy form; and

(b) For which benefits shall be available after consideration of claims paid or payable.

(5) If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificate holder of the right to reduce coverage and premiums in the notice required by section 4(1)(c) of this administrative regulation.

(6) A life insurance policy or rider, which includes accelerated long-term care benefits shall not be subject to the requirements of this section

(7) The requirements of this section shall apply to a long-term care policy issued in Kentucky on or after January 1, 2010.

Section 25. Nonforfeiture Benefit Requirement (1) A life insurance policy or rider, which includes accelerated long-term care benefits shall not be subject to the requirements of this section.

(2) Except as required in subsection (3) of this section, a long-term care insurance policy shall not be delivered or issued for delivery unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit.

(a) The offer of a nonforfeiture benefit may be in the form of a rider, which is attached to the policy.

(b) If a policyholder or certificate holder declines the nonforfeiture benefit identified in paragraph (a) of this subsection, the insurer shall provide a contingent benefit upon lapse, which shall be available for 120 days, following a substantial increase in premium rate, as established in subsection (6) of this section.

(3) If a group long-term care insurance policy is issued:

(a) The offer required in subsection (2) of this section shall be made to the group policyholder; or

(b) As group long-term care insurance as defined in KRS 304.14-600(5)(d), other than to a continuing care retirement community or other similar entity, the offer shall be made to each proposed certificate holder.

(4) A nonforfeiture benefit offer as identified in subsection (2) of this section shall:

(a) Include coverage elements, eligibility, benefit triggers, and benefit length, which are identical to coverage issued without nonforfeiture benefits;

(b) Be the benefit described in subsection (7) of this section; and

(c) Be in writing if the nonforfeiture benefit is not described in:

1. The Outline of Coverage required under KRS 304.14-615(7); or

2. Materials other than the Outline of Coverage, which are given to the prospective policyholder.

(5) If the offer required under subsection (2) of this section is:

(a) Rejected, the insurer shall provide the contingent benefit upon lapse described in this section; or,

(b) Accepted for a policy with a fixed or limited premium paying period, the contingent benefit upon lapse in subsection (6)(d) of this section shall apply.

(6)(a) After rejection of the offer required under subsection (2) of this section, the insurer shall provide a contingent benefit upon lapse for a policy issued after July 15, 2002, including:

1. An individual policy without a nonforfeiture benefit; and

2. A group policy without a nonforfeiture benefit.

(b) If a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c)1. A contingent benefit upon lapse shall be triggered as identified in the following table if:

a. An insurer increases the premium rates to a level, which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium as established in this paragraph based on the insured's issue age, and

b. The policy or certificate lapses within 120 days of the due date of the increased premium:

Triggers for a Substantial Premium Increase	
Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%

60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

2. Unless required by Section 6(7) of this administrative regulation, a policyholder shall be notified at least thirty (30) days prior to the due date of a premium reflecting the rate increase, as identified in this paragraph.

(d)1. A contingent benefit upon lapse shall be triggered for a policy, which includes a fixed or limited premium paying period, as identified in the following table, if,

a. An insurer increases the premium rates to a level, which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium as established in this paragraph based on the insured's issue age;

b. The policy or certificate lapses within 120 days of the due date of the premium, which increased; and

c. The ratio in paragraph (f)2 of this subsection is forty (40) percent or more:

Triggers for a Substantial Premium Increase	
Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

2. Unless an insurer shall provide notice as established in Section 6(7) of this administrative regulation, a policyholder shall be notified at least thirty (30) days prior to the due date of the premium reflecting a rate increase by the insurer.

3.a. An insurer shall be subject to this paragraph and the contingent benefit upon lapse provision of paragraph (c); and

b. If a trigger as identified in paragraph (c) and a trigger as identified in paragraph (d) are identified, the benefit provided shall be at the option of the insured.

(e) On or before the effective date of a substantial premium increase as established in paragraph (c) of this subsection, an insurer shall:

1. Offer to reduce policy benefits provided by the current coverage without requiring additional underwriting to prevent an increase in required premium payments;

2.a. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (7) of this section; and

b. Allow this option to be elected by the policyholder or certificate holder within the 120-day period identified in paragraph (c) of this subsection; and

3. Notify the policyholder or certificate holder that a default or lapse, which occurs within the 120-day period identified in paragraph (c) of this subsection shall be deemed to be an election of the offer to convert as identified in subparagraph 2 of this paragraph unless the automatic option in paragraph (f)3 applies.

(f) On or before the effective date of a substantial premium increase as identified in paragraph (d) of this subsection, the insurer shall:

1. Offer to reduce policy benefits provided by the current coverage without requiring additional underwriting in order that required premium payments are not increased;

2 a. Offer to convert the coverage to a paid-up status if the amount payable for each benefit is ninety (90) percent of the payable amount, which was in effect immediately prior to lapse, multiplied by the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period; and

b. Allow this option to be elected within the 120-day period identified in paragraph (d) of this subsection; and

3. Notify the policyholder or certificate holder that a default or lapse, which occurs within the 120-day period identified in paragraph (d) of this subsection shall be deemed to be an election of the offer to convert in subparagraph 2 of this paragraph if the ratio is forty (40) percent or more.

(7) A benefit continued as a nonforfeiture benefit, including a contingent benefit upon lapse in accordance with subsection (6)(c) of this section, shall be provided as follows:

(a)1. Pursuant to this subsection, a nonforfeiture benefit shall include a shortened benefit period, which provides paid-up long-term care insurance coverage after lapse.

2. The same benefit, including amount and frequency, in effect at lapse and not be increased in the future, shall be payable for a qualifying claim, except the lifetime maximum dollars or days of benefits shall be determined as established in paragraph (b) of this subsection.

(b)1. A standard nonforfeiture credit shall be equal to 100 percent of the sum of premiums paid, including the premiums paid prior to a change in benefits.

2. An insurer may offer an additional shortened benefit period option, if the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration.

3. The minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit upon lapse.

4. The calculation of a nonforfeiture credit shall be subject to the limitation of subsection (8) of this section.

(c)1 a. Except for a policy or certificate with attained age rating, a nonforfeiture benefit shall begin no later than the final day of the third year following the policy or certificate issue date.

b. A contingent benefit upon lapse shall be effective on the date of policy or certificate issue.

2. For a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of the end of the

a. Tenth year following the policy or certificate issue date; or

b. Second year following the date the policy or certificate is no longer subject to attained age rating.

(d)1. A nonforfeiture credit may be used for care and services qualifying for benefits under the terms of the policy or certificate; and

2. Shall not exceed the limits identified in the policy or certificate.

(8) Benefits paid by an insurer when the policy or certificate is in premium paying status and paid up status shall not exceed the maximum benefits, which would be payable if the policy or certificate had remained in premium paying status.

(9) For a group and individual policy, an insurer shall provide the minimum nonforfeiture benefit as required under this section.

(10)(a) Except as provided in subsection (6) and paragraph (b) and (c) of this subsection, the requirements of this section shall apply to a long-term care policy issued in Kentucky on or after July 15, 2003.

(b) The requirements of this section shall not apply to a certificate issued on or after July 15, 2003 under a group long-term care insurance policy, as identified in KRS 304 14-600(5)(a), which was in force before July 15, 2003.

(c) Except for a new certificate under a group policy, as identified in KRS 304.14-600(5)(a), issued on July 16, 2003, the requirements of subsections (5)(b) and (6)(d) and (f) of this section shall apply to a long-term care insurance policy or certificate issued on and after January 16, 2003.

(11) A premium charged for a policy or certificate, which contains a nonforfeiture benefit or a contingent benefit upon lapse shall be subject to the loss ratio requirements established in Section 16 or 17 of this administrative regulation, as applicable, treating the policy as a whole.

(12) To determine if a contingent benefit upon lapse provision as identified in subsection (6)(c) or (d) of this section is triggered, a replacing insurer, which purchased or assumed a block of long-term care insurance policies from an insurer, shall calculate the percent increase based on the initial annual premium paid by the insured on the date the policy was purchased from the original insurer.

(13) For a qualified long-term care insurance contract, which is a level premium contract, the nonforfeiture benefit offered by an insurer shall:

(a) Be appropriately captioned;

(b) Indicate that the nonforfeiture benefit is available if a default in the premium payment occurs;

(c) State that the amount of the benefit may be adjusted subsequent to being initially granted, as necessary, to reflect a change in claims, persistency, and interest as reflected in a change in a rate for a premium paying contract approved by the commissioner for the identical contract form; and

(d) Provide at least one (1) of the following

1. Reduced paid up insurance;

2. Extended term insurance;

3. Shortened benefit period; or

4. An offering, which is:

a. Similar to an offering as identified in subparagraphs 1, 2, or 3 of this paragraph; and

b. Approved by the commissioner.

Section 26. Standards for Benefit Triggers. (1) A long-term care insurance policy shall condition the payment of benefits based upon a determination of the insured's:

(a) Ability to perform activities of daily living; and

(b) Cognitive impairment.

(2) Eligibility for the payment of benefits shall not be more restrictive than requiring:

(a) A deficiency in the ability to perform no more than three (3) activities of daily living; or

(b) The presence of cognitive impairment.

(3) (a) Activities of daily living shall include no less than the activities defined in Section 2(1) of this administrative regulation and the policy; and

(b) To trigger covered benefits, an insurer may use activities of daily living, which are:

1. Described in paragraph (a) of this subsection; and

2. In addition to activities identified in paragraph (a) if defined in the policy.

(4)(a) An insurer may use a provision other than activities of daily living as identified in subsection (3) of this section to determine the date benefits are payable under a policy or certificate; and

(b) If a provision as established in paragraph (a) of this subsection is used by the insurer, the provision shall not:

1. Restrict the requirements identified in subsections (1), (2), and (3) of this section; and

2. Be used in lieu of the requirements of subsections (1), (2), and (3) of this section.

(5) A determination of a deficiency, as identified in this section, shall not be more restrictive than:

(a) Requiring the hands on assistance of another person to perform the prescribed activities of daily living as identified in subsection (3) of this section, or

(b) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(6) An assessment of an insured's activities of daily living and cognitive impairment shall be performed by a licensed or certified professional, including a:

(a) Physician;

(b) Nurse; or

(c) Social worker.

(7) A long-term care insurance policy shall include a clear description of the process for an appeal and resolution of a benefit determination.

(8) The requirements identified in this section

(a) Except as provided in paragraph (b) of this subsection, shall apply to a long-term care policy issued in Kentucky on or after July 15, 2002.

(b) Shall not apply to a certificate under a group long-term care insurance policy, as identified in KRS 304.14-600(5)(a), which was in force before July 15, 2003.

Section 27. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts. (1) A qualified long-term care insurance contract shall pay for a qualified long-term care service received by a chronically-ill individual if the service is provided in accordance with a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract shall condition the payment of benefits on a certified determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to:

(a) A loss of functional capacity; or

(b) Severe cognitive impairment.

(3) A certification as required pursuant to subsection (2) of this section:

(a) Shall be performed by a licensed or certified professional, including a licensed health care practitioner; and

(b) May be performed at the direction of an insurer, if the certification is reasonably necessary to determine payment for a specific claim.

(4) If a licensed health care practitioner certified that an insured is unable to perform activities of daily living for an expected period of time of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status:

(a) The certification performed pursuant to subsection (3)(b) of this section shall not be rescinded; and

(b) An additional certification shall not be performed until the ninety (90) day period has expired.

(5) A qualified long-term care insurance contract shall include a clear description of the process for the appeal and resolution of a dispute regarding a benefit determination.

Section 28 Standard Format and Content of an Outline of Coverage. Pursuant to the requirements of KRS 304.14-615(7):

(1) An outline of coverage shall:

(a) Be a freestanding document, which is printed in no less than ten (10) point type; and

(b) Not contain material of an advertising nature.

(2) Text, which is capitalized or underscored in the standard format outline of coverage, may be emphasized by using a method, which provides prominence equivalent to the:

(a) Capitalization; or

(b) Underscoring.

(3) Except as indicated, use of the text and sequence of text shall be:

(a) Mandatory; and

(b) Consistent with the Outline of Coverage, HIPMC-LTC-7.

(5) The format to be used for the outline of coverage shall be Consistent with the Outline of Coverage, HIPMC-LTC-7

Section 29 Requirement to Deliver Shopper's Guide. (1) A long-term care insurance shopper's guide developed by the National Association of Insurance Commissioners, which is available at www.naic.org, or a guide developed or approved by the commissioner, shall be provided to a prospective applicant of a long-

term care insurance policy or certificate

(a) For agent solicitation, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) For direct response solicitation, an insurer shall deliver the shopper's guide in conjunction with an application or enrollment form.

(2) An insurer offering a life insurance policy or rider, which includes accelerated long-term care benefits shall:

(a) Not be required to provide a shopper's guide as identified in subsection (1) of this section; and

(b) Provide a policy summary, including a:

1. Statement, which establishes that a long-term care inflation protection option as identified in Section 10 of this administrative regulation is not available under the policy, and

2. Items as identified and required under KRS 304 14-615(9).

Section 30. Penalties. An insurer or agent, who is identified as violating a requirement of Kentucky Insurance Code relating to the regulation or marketing of long-term care insurance shall be subject to the greater of:

(1) A fine of up to three (3) times the amount of a commission paid for each policy involved in the violation or up to $10,000; or

(2) A penalty as identified in KRS Chapter 304, subtitles 3, 9, 12, 14, 17, and 99, and this administrative regulation.

Section 31. Permitted Compensation Arrangements. (1) Upon replacement the replacing insurer shall not provide compensation to its agents or other producers greater than 200% of the renewal compensation payable by the replacing insurer on renewal policies.

(2) A commission or other compensation provided in subsequent renewal years by the replacing insurer shall be:

(a) The same as that provided in the second year or period; and (b) Provided for a reasonable number of renewal years.

(3) If long-term care insurance is provided under annuities or life insurance policies or riders, the requirements of this section shall apply only to the commissions or other compensation attributable to the long-term care insurance provided by these policies or riders.

Section 30. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Long-term Care Insurance Personal Worksheet, HIPMC-LTC-1", 09/2008;

(b) "Long-term Care Insurance Potential Rate Increase Disclosure Form, HIPMC-LTC-2", 09/2008;

(c) "Rescission Reporting Form for Long-term Care Policies, HIPMC-LTC-3", 09/2008;

(d) "Claims Denial Reporting Form for Long-term Care Insurance, HIPMC-LTC-4", 09/01;

(e) "Things You Should Know Before You Buy Long-term Care Insurance, HIPMC-LTC-5", 09/2008;

(f) "Long-term Care Insurance Suitability Letter, HIPMC-LTC-6", 09/2008;

(h) "Outline of Coverage, HIPMC-LTC-7", 09/2008;

(i) "Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-term Care Insurance, HIPMC-LTC-8", 09/2008;

(j) "Notice to Applicant Regarding Replacement of Accident and Sickness or Long-term Care Insurance, HIPMC-LTC-9", 09/2008;

(k) "Disclosures and Language for Long-term Care Policies and Certificates, HIPMC-LTC-10", 09/2008; and

(l) "Long-term Care insurance replacement and lapse reporting form, HIPMC-LTC-11", 09/2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the department's Web site at http://insurance.ky.gov. [~~Section 1. Definitions. (1) "Applicant" is defined in KRS 304.14-600(3).~~

~~(2) "Attained-age rating" means a schedule of premiums starting from the issue date which increases age at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50).~~

~~(3) "Certificate" is defined in KRS 304.14-600(4).~~

~~(4) "Chronically ill individual", pursuant to 26 U.S.C. 7702B(c)(2):~~

~~(a) Means any individual who has been certified by a licensed health care practitioner as:~~

~~1. Being unable to perform without substantial assistance from another individual at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or~~

~~2. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; and~~

~~(b) Shall not include an individual otherwise meeting these requirements unless within the preceding twelve (12) month period a licensed health care practitioner has certified that the individual meets these requirements.~~

~~(5) "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.~~

~~(6) "Cold lead advertising" means the use of any method of marketing which fails to disclose in a clear, easy to notice manner that a purpose of the method of marketing is solicitation of insurance and contact will be made by an insurance agent or insurance company.~~

~~(7) "Commissioner" means the Commissioner of Insurance.~~

~~(8) "Denied claim" means the insurer refuses to pay a claim for any reason except for failure to meet the waiting period or due to an applicable preexisting condition.~~

~~(9) "Department" means the Department of Insurance.~~

~~(10) "Exceptional increase" means a premium rate increase filed by an insurer as exceptional, which the commissioner determines is necessary and justified due to:~~

~~(a) Changes in Kentucky laws or administrative regulations applicable to long-term care coverage; or~~

~~(b) Increased and unexpected utilization that affects the majority of insurers of similar products.~~

~~(11) "Group long-term care insurance" is defined in KRS 304.14-600(5).~~

~~(12) "High pressure tactics" means employing any method of marketing that may affect or induce the purchase of insurance through force, fright, explicit or implied threat, or create undue pressure to purchase or recommend the purchase of insurance.~~

~~(13) "Incidental" is defined in KRS 304.14-600(1).~~

~~(14) "Individually identifiable information" means person information gathered in connection with an insurance transaction from which judgment may be made regarding an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or other personal characteristics including an individual's name, address, and medical record information.~~

~~(15) "Insurer" is defined in KRS 304.1-040.~~

~~(16) "Interlocking directorates" means two (2) separate boards of directors that have at least one (1) director in common.~~

~~(17) "Kentucky insurance code" means the statutes referenced in KRS 304.1-010 and the administrative regulations established in KAR Title 806.~~

~~(18) "Licensed health care practitioner" means a physician as defined in 42 U.S.C. 1395x(r), registered nurse, licensed social worker, or other individual who meets the requirements of 26 U.S.C. 7702B(c)(4).~~

~~(19) "Limited distribution channel" means a discrete entity, including a financial institution or brokerage, through which a specialized product is made available to a purchaser other than the general public.~~

~~(20) "Long-term care benefits classifications" means:~~

~~(a) Institutional long-term care benefits only;~~

~~(b) Noninstitutional long-term care benefits only; or~~

~~(c) Comprehensive long-term care benefits.~~

~~(21) "Long-term care insurance" is defined in KRS 304.14-600(2).~~

~~(22) "Maintenance or personal care services" means care for which the primary purpose is the provision of needed assistance with a disability as a result of which the individual is a chronically ill~~

~~individual, including protection from threats to health and safety due to severe cognitive impairment.~~

~~(23) "Managed care plan" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.~~

~~(24) "Misrepresentation" means misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.~~

~~(25) "Policy" is defined in KRS 304.14-600(6).~~

~~(26) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.~~

~~(27) "Qualified long-term care insurance contract" or "federally-tax-qualified long-term care insurance contract" means:~~

~~(a) An individual or group insurance contract that meets the requirements of 26 U.S.C. 7702B(b) as follows:~~

~~1. The insurance protection provided under the contract shall be limited to coverage of qualified long-term care services and the contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;~~

~~2.a. The contract shall not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, 42 U.S.C. 1395 et seq., or would be reimbursable except for the application of a deductible or coinsurance amount;~~

~~b. The requirements of this subparagraph shall not apply to expenses that are reimbursable under 42 U.S.C. 1395 et seq. as a secondary payor; and~~

~~c. The contract shall not fail to satisfy the requirements of this subparagraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;~~

~~3. The contract shall be guaranteed renewable, as established in 26 U.S.C. 7702B(b)(1)(C);~~

~~4. The contract shall not provide for a cash surrender value or other money that may be paid, assigned, pledged as collateral for a loan, or borrowed except as required in subparagraph 5 of this paragraph;~~

~~5. Refunds of premiums and policyholder dividends or similar amounts under the contract shall be applied as a reduction in future premiums or to increase future benefits, except that a refund upon death of the insured, a complete surrender, or cancellation of the contract shall not exceed the aggregate premiums paid under the contract; and~~

~~6. The contract shall meet the consumer protection provisions as established in 26 U.S.C. 7702B(g), or~~

~~(b) The portion of a life insurance contract that:~~

~~1. Provides long-term care insurance coverage by rider or as part of the contract, and~~

~~2. Meets the requirements of 26 U.S.C. 7702B(b) and (c).~~

~~(28) "Qualified long-term care services" means services required in 26 U.S.C. 7702B(c)(1), including necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and provided pursuant to a plan of care prescribed by a licensed health care practitioner.~~

~~(29) "Similar policy forms" means:~~

~~(a) Long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered, or~~

~~(b) Certificates of groups, as identified in KRS 304.14-600(5)(a) similar to other comparable certificates of groups that meet the definition in KRS 304.14-600(5)(a) with the same long-term care benefit classifications.~~

~~(30) "Twisting" means knowingly making a misleading representation or incomplete or fraudulent comparison of insurance policies or insurers for the purpose of inducing, or tending to induce, a person to:~~

~~(a) Lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy, or~~

~~(b) Secure an insurance policy from another insurer.~~

~~Section 2. Policy Definitions. A long-term care insurance policy delivered or issued for delivery in Kentucky shall not include the following terms unless the terms are defined in the policy and the definitions satisfy the following requirements:~~

~~(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.~~

~~(2) "Acute condition" means that the individual is medically unstable and requires frequent monitoring by medical professionals, including physicians and registered nurses, in order to maintain health status.~~

~~(3) "Adult day care" means a program for four (4) or more individuals, of social- or health-related, or both, services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who may benefit from care in a group setting outside the home.~~

~~(4) "Bathing" means washing oneself by sponge bath, or in a tub or shower, including the task of getting into or out of the tub or shower.~~

~~(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.~~

~~(6) "Continence" means the ability to maintain control of bowel and bladder function, or, if unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).~~

~~(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.~~

~~(8) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.~~

~~(9) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.~~

~~(10) "Home health care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.~~

~~(11) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.~~

~~(12) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.~~

~~(13) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.~~

~~(14) "Skilled nursing care", "intermediate care", "personal care", "home care", and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care shall be delivered.~~

~~(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.~~

~~(16) "Transferring" means moving into or out of bed, chair, or wheelchair.~~

~~(17) All providers of services, including but not limited to "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", and "home care agency", shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.~~

~~Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this administrative regulation.~~

~~(a) A long-term care insurance policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."~~

~~(b) The term "guaranteed renewable" may be used only if the~~

~~Insured has the right to continue the long-term care insurance in force by the timely payment of premiums and if the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.~~

~~(c) The term "noncancellable" may be used only if the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.~~

~~(d) The term "level premium" may only be used if the insurer does not have the right to change the premium.~~

~~(e) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of 26 U.S.C. 7702B(b)(1)(C).~~

~~(2) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:~~

~~(a) Preexisting conditions or diseases in accordance with KRS 304.14-615(3)(d);~~

~~(b) Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;~~

~~(c) Alcoholism and drug addiction;~~

~~(d) Illness, treatment, or medical condition arising out of:~~

~~1. War or act of war (whether declared or undeclared);~~

~~2. Participation in a felony, riot, or insurrection;~~

~~3. Service in the armed forces or auxiliary units;~~

~~4. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or~~

~~5. Aviation (this exclusion shall apply only to nonfare-paying passengers);~~

~~(e) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;~~

~~(f) If a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under 42 U.S.C. 1395 et seq. or would be so reimbursable except for the application of a deductible or coinsurance amount; and~~

~~(g) This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.~~

~~(3) Extension of benefits.~~

~~(a) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination.~~

~~(b) The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits, and may be subject to any policy waiting period, and all other applicable provisions of the policy.~~

~~(4) Continuation or conversion. Group long-term care insurance issued in Kentucky on or after the effective date of this administrative regulation shall provide a covered individual with a basis for continuation or conversion of coverage.~~

~~(a) A policy provision shall provide for continued coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.~~

~~1. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy; and~~

~~2. The executive director shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.~~

~~(b) A policy provision shall provide that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced) shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.~~

~~1. A converted policy shall be an individual policy of long-term care insurance that provides benefits identical to or benefits determined by the executive director to be substantially similar to or in excess of those provided under the group policy from which conversion is made.~~

~~2. If the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the executive director, in making a determination as to the substantial similarity of benefits, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.~~

~~(c) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days after the notice of the right to conversion health insurance is given by the insurer, pursuant to KRS 304.18-110(9).~~

~~(d) A converted policy shall be issued effective on the date of termination of coverage under the group policy, and shall be renewable annually.~~

~~(e) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. If the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.~~

~~(f) Continuation of coverage or issuance of a converted policy shall be mandatory, except if:~~

~~1. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or~~

~~2. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:~~

~~a. Providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and~~

~~b. The premium for which is calculated in a manner consistent with the requirements of paragraph (e) of this subsection.~~

~~(g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if:~~

~~1. The benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses, and~~

~~2. The converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.~~

~~(h) A converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.~~

~~(i) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon his relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.~~

~~(5) Discontinuance and replacement.~~

~~(a) If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the~~

~~succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination.~~

~~(b) Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:~~

~~1. Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced, and~~

~~2. Vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.~~

~~(6)(a) The premium charged to an insured for long-term care insurance shall not increase due to either:~~

~~1. The increasing age of the insured at ages beyond sixty-five (65); or~~

~~2. The duration the insured has been covered under the policy.~~

~~(b) The purchase of additional coverage shall not be considered a premium rate increase, except for the calculation required under Section 22 of this administrative regulation, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.~~

~~(c) A reduction in benefits shall not be considered a premium change, except for the calculation required under Section 22 of this administrative regulation, the initial annual premium shall be based on the reduced benefits.~~

~~(7) Electronic enrollment for group policies.~~

~~(a) A requirement that a signature of a group long-term care insurance insured be obtained by an agent or insurer shall be deemed satisfied if:~~

~~1. The consent is obtained by a telephonic or electronic enrollment by the group policyholder or insurer;~~

~~2. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records, and~~

~~3. The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable health information is maintained.~~

~~(b) A verification of enrollment information shall be provided to the enrollee.~~

~~(c) An insurer shall make available, upon request of the executive director, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.~~

~~Section 4. Unintentional Lapse. An insurer offering long term care insurance shall, as a protection against unintentional lapse, comply with the following:~~

~~(1)(a) Notice before lapse or termination.~~

~~1. An individual long-term care policy or certificate shall not be issued until the insurer has received from the applicant either a written:~~

~~a. Designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or~~

~~b. Waiver, dated and signed by the applicant, electing not to designate additional persons to receive notice.~~

~~2. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured.~~

~~3. The form used for the written designation shall provide space clearly designated for listing at least one (1) person.~~

~~4. The designation shall include each person's full name and home address.~~

~~5. If an applicant elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one (1) person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."~~

~~6. The insurer shall notify the insured of the right to change a written designation, no less often than once every two (2) years.~~

~~(b)1. If a policy holder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements of paragraph (a) of this subsection shall not need to be met until sixty (60) days after the policyholder or certificate holder is no longer on the payment plan.~~

~~2. The application or enrollment form for the policies or certificates shall clearly indicate the payment plan selected by the applicant.~~

~~(c) Lapse or termination for nonpayment of premium.~~

~~1. An individual long-term care policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to paragraph (a) of this subsection, at the address provided by the insured for purposes of receiving notice of lapse or termination.~~

~~2. Notice shall:~~

~~a. Be given by first class United States mail, postage prepaid;~~

~~b. Not be given until thirty (30) days after a premium is due and unpaid, and~~

~~c. Be deemed to have been given as of five (5) days after the date of mailing.~~

~~(2) Reinstatement. In addition to the requirement in subsection (1) of this section, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, if lapse occurs, if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.~~

~~(a) This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, if appropriate.~~

~~(b) The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.~~

~~Section 5. Required Disclosure Provisions. (1) Renewability.~~

~~(a) Individual long-term care insurance policies shall contain a renewability provision.~~

~~(b) The provision shall:~~

~~1. Be appropriately captioned;~~

~~2. Appear on the first page of the policy; and~~

~~3. State clearly that the coverage is guaranteed renewable or noncancellable.~~

~~(c) This subsection shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.~~

~~(d) A long-term care insurance policy or certificate, other than one (1) in which the insurer does not have the right to change the premium, shall include a statement that premium rates may change.~~

~~(2) Riders and endorsements.~~

~~(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.~~

~~(b) After the date of policy issue, a rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.~~

~~(c) If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.~~

~~(3) Payment of benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of these terms in its accompanying outline of coverage.~~

~~(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."~~

~~(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in KRS 304.14-615(4)(b) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."~~

~~(6) Disclosure of tax consequences.~~

~~(a) A disclosure statement shall be required, as specified in paragraphs (b), (c) and (d) of this subsection, for life insurance policies which provide benefits which are accelerated for long-term care.~~

~~(b) The disclosure statement shall be required both at the time:~~

~~1. Of application for the policy or rider, and~~

~~2. The benefit payment request is submitted.~~

~~(c) The statement shall disclose that:~~

~~1. Receipt of the benefits may be taxable, and~~

~~2. Assistance should be sought from a personal tax advisor.~~

~~(d) The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.~~

~~(e) This subsection shall not apply to qualified long-term care insurance contracts.~~

~~(7) Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits".~~

~~(a) Any additional benefit triggers shall also be explained in this section of the policy or certificate.~~

~~(b) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.~~

~~(c) If an attending physician or other specified person must certify a certain level of functional dependency in order to determine eligibility for benefits, this too shall be specified.~~

~~(8) A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage, as contained in Section 25(5)(c) of this administrative regulation, that the policy is intended to be a qualified long-term care insurance contract under 29 U.S.C. 7702B(b).~~

~~(9) A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage, as contained in Section 25(5)(c) of this administrative regulation, that the policy is not intended to be a qualified long-term care insurance contract.~~

~~Section 6. Required Disclosure of Rating Practices to Consumers. (1) Except as provided in subsection (2) of this section, this section shall apply to any long-term care policy or certificate issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.~~

~~(2) For a certificate issued on or after the effective date of this administrative regulation under a group long-term care insurance policy, which policy was in force at the time this administrative regulation became effective, the provisions of this section shall apply on the policy anniversary following twelve (12) months after the effective date of this administrative regulation.~~

~~(3) Except for a policy for which no applicable premium rate or rate schedule increases can be made, an insurer shall provide all of the information listed in this subsection to the applicant when application or enrollment occurs, unless the method of application does not allow for delivery at that time:~~

~~(a) A statement that the policy may be subject to rate increases in the future;~~

~~(b) An explanation of potential future premium rate revisions, and the policyholder's or certificate holder's option if a premium rate is revised;~~

~~(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;~~

~~(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:~~

~~1. A description of when premium rate or rate schedule adjustments will be effective, such as the next anniversary date or next billing date; and~~

~~2. The right to a revised premium rate or rate schedule as provided in subsection (2) of this section if the premium rate or rate schedule is changed; and~~

~~(e) 1. Information regarding each premium rate increase on the current policy form or similar policy forms over the past ten (10) years for Kentucky or any other state that, at a minimum, shall identify:~~

~~a. The policy forms for which premium rates have been increased;~~

~~b. The calendar years when the form was available for purchase; and~~

~~c. The amount or percent of each increase. The percentage may be expressed as:~~

~~(i) A percentage of the premium rate prior to the increase; or~~

~~(ii) Minimum and maximum percentages if the rate increase is variable by rating characteristics.~~

~~2. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.~~

~~3. An insurer may exclude from the disclosure premium rate increases that occurred prior to the acquisition of and that only apply to:~~

~~a. Blocks of business acquired from other nonaffiliated insurers, or~~

~~b. The long-term care policies acquired from other nonaffiliated insurers.~~

~~4. If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers and if those increases occurred prior to the acquisition on or before the later of the effective date of this administrative regulation or the end of a twenty-four (24) month period following the acquisition of the block of business or policies, the acquiring insurer may exclude that rate increase from the disclosure.~~

~~a. The rate increase that may be excluded pursuant to this subparagraph shall be disclosed by the nonaffiliated selling company in accordance with subparagraph 1 of this paragraph.~~

~~b. If the acquiring insurer files for a subsequent rate increase, even within the twenty-four (24) month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by this paragraph, including disclosure of the earlier rate increase.~~

~~(4) If the method of application does not allow for delivery when application or enrollment occurs, the information listed in subsection (3) of this section shall be delivered to the applicant no later than when the policy or certificate is delivered.~~

~~(5) An applicant shall sign an acknowledgement when application occurs, unless the method of application does not allow signature at that time, that the insurer made the disclosure required under subsection (3)(a) and (e) of this section.~~

~~(6) If the method of application does not allow signature when application occurs in accordance with subsection (5) of this section, the applicant shall sign an acknowledgement no later than when the policy or certificate is delivered.~~

~~(7) An insurer shall use forms HIPMC-LTC-1 (09/01) and HIPMC-LTC-2 (09/01), incorporated by reference in this administrative regulation, to comply with the requirements of subsections (3) and (5) of this section.~~

~~(8) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer.~~

~~(9) The notice required, pursuant to subsection (8) of this section, shall include the information required by subsection (3) of this section when the rate increase is implemented.~~

~~Section 7. Initial Filing Requirements. (1) This section shall apply to any long-term care policy issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.~~

~~(2) An insurer shall provide the information listed in this subsection to the executive director in accordance with the time period set forth in KRS 304.14-120(2):~~

~~(a) A copy of the disclosure documents required in Section 6 of this administrative regulation; and~~

~~(b) An actuarial certification consisting of at least the following:~~

~~1. A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated,~~

~~2. A statement that the policy design and coverage provided have been reviewed and taken into consideration;~~

~~3. A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;~~

~~4. A complete description of the basis for contract reserves that are anticipated to be held under the form, including:~~

~~a. Sufficient detail or sample calculations to depict completely the reserve amounts to be held;~~

~~b. A statement that the assumptions used for reserves contain reasonable margins for adverse experience;~~

~~c. A statement that the net valuation premium for renewal years does not increase, except for attained-age rating if permitted; and~~

~~d. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if the statement cannot be made, a complete description of the situations in which this does not occur.~~

~~(i) An aggregate distribution of anticipated issues may be used if the underlying gross premiums maintain a reasonably consistent relationship;~~

~~(ii) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the executive director may request a demonstration under subsection (3) of this section based on a standard age distribution, and~~

~~5 a. A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits, or~~

~~b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.~~

~~(3) The executive director may request an actuarial demonstration that benefits are reasonable in relation to premiums which shall include premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and creditable data from other studies, or both.~~

~~Section 8. Prohibition Against Postclaims Underwriting. (1) Applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.~~

~~(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the medication that has been prescribed.~~

~~(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.~~

~~(3) Except for policies or certificates which are guaranteed issue:~~

~~(a) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: "Caution: If your answers on this application, to the best of your knowledge and belief, are incorrect or untrue, (insurer name) has the right to deny benefits or rescind your policy."~~

~~(b) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate when it is delivered. "Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."~~

~~(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following:~~

~~1. A report of a physical examination;~~

~~2. An assessment of functional capacity;~~

~~3. An attending physician's statement; or~~

~~4. Copies of medical records.~~

~~(4) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than when the policy or certificate is delivered unless it was retained by the applicant when the applicant applied.~~

~~(5) Every insurer issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both Kentucky and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the executive director in the form incorporated by reference in this administrative regulation as HIPMC-LTC-3 (09/01).~~

~~Section 9. Minimum Standards for Home Health and Community Care Benefits in Long-term Care Insurance Policies. (1) If a long-term care insurance policy or certificate provides benefits for home health care or community care services, it shall not limit or exclude benefits by:~~

~~(a) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided,~~

~~(b) Requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a home, community, or institutional setting before home health care services are covered;~~

~~(c) Limiting eligible services to services provided by registered nurses or licensed practical nurses;~~

~~(d) Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of his licensure or certification;~~

~~(e) Excluding coverage for personal care services provided by a home health aide;~~

~~(f) Requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;~~

~~(g) Requiring that the insured or claimant have an acute condition before home health care services are covered;~~

~~(h) Limiting benefits to services provided by Medicare-certified agencies or providers; or~~

~~(i) Excluding coverage for adult day care services.~~

~~(2) If a long-term care insurance policy or certificate provides for home health or community care services, it shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year's coverage available for nursing home benefits under the policy or certificate, when covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.~~

~~(3) Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate if determining maximum coverage under the terms of the policy or certificate.~~

~~Section 10. Requirement to Offer Inflation Protection. (1) An insurer shall not offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or a policy that provides for an increase in the period of coverage which shall meet anticipated increases in the costs of long-term care services covered by the policy. Insurers shall offer to each policyholder, when the policy is purchased, the option to purchase a policy with an inflation protection feature no less favorable than one (1) of the following:~~

~~(a) Increases benefit levels annually in a manner so that the~~

~~increases are compounded annually at a rate not less than five (5) percent;~~

~~(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status if the option for the previous period has not been declined. The amount of the additional benefit shall not be less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five (5) percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or~~

~~(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.~~

~~(2) If the policy is issued to a group, the required offer in subsection (1) of this section shall be made to the group policyholder, but if the policy is issued to a group defined in KRS 304.14-600(4)(d) other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.~~

~~(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.~~

~~(4) Insurers shall include the following information in or with the outline of coverage. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.~~

~~(a) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period, and~~

~~(b) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.~~

~~(5) Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status, or claim history, or the length of time the person has been insured under the policy.~~

~~(6) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.~~

~~(7)(a) Inflation protection as provided in subsection (1)(a) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.~~

~~(b) The rejection, which may be either in the application or in a separate form, shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans ____, and I reject inflation protection."~~

~~Section 11. Requirements for Application Forms and Replacement Coverage. (1)(a) Application forms shall include questions designed to elicit information as to whether:~~

~~1. The applicant has another long-term care insurance policy or certificate in force as of the date of application; or~~

~~2. A long-term care insurance policy or certificate is intended to replace:~~

~~a. Any other accident and sickness policy or certificate presently in force; or~~

~~b. Any other long-term care policy or certificate presently in force.~~

~~(b) Except if coverage is sold without an agent, a supplementary application or other form, containing the questions required by this section, may be used if signed by the:~~

~~1. Applicant, and~~

~~2. Agent.~~

~~(c) If a replacement policy is issued to a group, as defined by KRS 304.14-600(4)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the certificate holder has been notified of the replacement.~~

~~1. Do you have another long-term care insurance policy or certificate in force (including health care service contract or health maintenance organization contract)?~~

~~2. Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?~~

~~a. If so, with which company?~~

~~b. If that policy lapsed, when did it lapse?~~

~~3. Are you covered by Medicaid?~~

~~4. Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?~~

~~(2) Agents shall list other health insurance policies they have sold to the applicant which:~~

~~(a) Are still in force; and~~

~~(b) Were sold in the past five (5) years but are no longer in force.~~

~~(3) Solicitations other than direct response.~~

~~(a) Upon determining that a sale will involve replacement, an insurer (other than an insurer using direct response solicitation methods or its agent) shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage.~~

~~(b) One (1) copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer.~~

~~(c) The notice shall be provided as follows:~~

~~NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE~~

~~(Insurer's name and address)~~

~~SAVE THIS NOTICE!~~

~~IT MAY BE IMPORTANT TO YOU IN THE FUTURE.~~

~~According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.~~

~~You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.~~

~~STATEMENT TO APPLICANT BY AGENT (BROKER OR OTHER REPRESENTATIVE):~~

~~(Use additional sheets, as necessary.)~~

~~I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:~~

~~(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.~~

~~(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.~~

~~(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.~~

~~(d) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the~~

~~company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.~~
~~Signature of Agent, Broker, or Other Representative:~~
~~Typed Name and Address of Agent or Broker:~~
~~The above "Notice to Applicant" was delivered to me on:~~
~~Date:~~
~~Applicant's Signature:~~

~~(4) Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant when it is determined that a sale will involve a replacement. The notice shall be provided in the following manner:~~

~~NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE~~
~~(Insurer's name and address)~~
~~SAVE THIS NOTICE!~~
~~IT MAY BE IMPORTANT TO YOU IN THE FUTURE.~~

~~According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.~~

~~You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.~~

~~(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.~~

~~(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent the time was spent (depleted) under the original policy.~~

~~(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.~~

~~(d) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insurer name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.~~
~~Insurer Name:~~

~~(5) If replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. The notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.~~

~~(6) Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy.~~

~~(a) If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of 806 KAR 12:080.~~

~~(b) If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.~~

~~Section 12. Reporting Requirements. (1) An insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.~~

~~(2) An insurer shall report annually by June 30 the ten (10) percent of its agents with the greatest percentages of lapses and replacements as measured by subsection (1) of this section.~~

~~(3) Reported replacement and lapse rates shall not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports shall be for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.~~

~~(4) An insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.~~

~~(5) An insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.~~

~~(6) An insurer shall report annually by June 30, by completing and filing HIPMC-LTC-4 (09/01), incorporated by reference in this administrative regulation, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied.~~

~~(7) All reports shall be made on a statewide basis.~~

~~(8) All reports required by this section shall be filed with the executive director.~~

~~Section 13. Licensing. An agent shall not be authorized to market, sell, solicit, or otherwise contact a person for the purpose of marketing long-term care insurance unless the agent has demonstrated his knowledge of long-term care insurance and the appropriateness of the insurance by passing a test required by KRS 304.9-105(5)(c) and maintaining appropriate licenses.~~

~~Section 14. Reserve Standards. (1)(a) If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.~~

~~(b) Claim reserves shall also be established if the policy or rider is in claim status.~~

~~(c) Reserves for policies and riders subject to the requirements of this subsection may be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates.~~

~~(d) Single decrement approximations shall be acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial.~~

~~(e) The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits, except the reserves for the long-term care benefit and the life insurance benefit shall not be less than the reserves for the life insurance benefit assuming no long-term care benefit.~~

~~(f) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations which have an impact on projected claim costs, including the following:~~

~~1. Definition of insured events;~~
~~2. Covered long-term care facilities;~~
~~3. Existence of home convalescence care coverage;~~
~~4. Definition of facilities;~~
~~5. Existence or absence of barriers to eligibility;~~
~~6. Premium waiver provision;~~

~~7. Renewability;~~
~~8. Ability to raise premiums;~~
~~9. Marketing method;~~
~~10. Underwriting procedures;~~
~~11. Claims adjustment procedures;~~
~~12. Waiting period;~~
~~13. Maximum benefit;~~
~~14. Availability of eligible facilities;~~
~~15. Margins in claim costs;~~
~~16. Optional nature of benefit;~~
~~17. Delay in eligibility for benefit;~~
~~18. Inflation protection provisions; and~~
~~19. Guaranteed insurability option.~~

~~(g) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.~~

~~(2) If long-term care benefits are provided other than as in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.~~

~~Section 15. Loss Ratio. (1) This section shall apply to all long-term care insurance policies or certificates except those covered under Sections 7 and 16 of this administrative regulation.~~

~~(2) Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums if the expected loss ratio is at least sixty (60) percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:~~

~~(a) Statistical credibility of incurred claims experience and earned premiums;~~

~~(b) The period for which rates are computed to provide coverage;~~

~~(c) Experienced and projected trends;~~

~~(d) Concentration of experience within early policy duration;~~

~~(e) Expected claim fluctuation;~~

~~(f) Experience refunds, adjustments, or dividends;~~

~~(g) Renewability features;~~

~~(h) All appropriate expense factors;~~

~~(i) Interest;~~

~~(j) Experimental nature of the coverage;~~

~~(k) Policy reserves;~~

~~(l) Mix of business by risk classification; and~~

~~(m) Product features such as long elimination periods, high deductibles, and high maximum limits.~~

~~(3) Subsection (2) of this section shall not apply to life insurance policies that accelerate benefits for long-term care.~~

~~(4) A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit shall be considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:~~

~~(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;~~

~~(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of KRS 304.15-310;~~

~~(c) The policy meets the following disclosure requirements:~~

~~1. If an application for a long-term care insurance contract or certificate is approved, the insurer shall deliver the contract or certificate of insurance to the applicant no later than thirty (30) days after the date of approval;~~

~~2. When the policy is delivered, a policy summary shall be delivered in accordance with KRS 304.14-615(9);~~

~~3. The policy summary shall state that any long-term care inflation protection option required by Section 10(1) of this administrative regulation is not available under this policy;~~

~~4. The policy summary required by subparagraph 2 of this paragraph may be incorporated into a basic illustration that meets the requirements of Section 29 of this administrative regulation; and~~

~~5. A monthly report shall be provided in accordance with KRS 304.14-615(10), when a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status;~~

~~(d) Any policy illustration meets the applicable requirements of Section 29 of this administrative regulation; and~~

~~(e) An actuarial memorandum is filed with the insurance office that includes:~~

~~1. A description of the basis on which the long-term care rates were determined;~~

~~2. A description of the basis for the reserves;~~

~~3. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;~~

~~4. A description and a table of each actuarial assumption used. For expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;~~

~~5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;~~

~~6. The estimated average annual premium per policy and the average issue age;~~

~~7. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs, and~~

~~8. A description of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.~~

~~Section 16. Premium Rate Schedule Increases. (1) This section shall apply as follows:~~

~~(a) Except as provided in paragraph (b) of this subsection, this section shall apply to any long-term care policy or certificate issued in Kentucky beginning six (6) months after the effective date of this administrative regulation.~~

~~(b) For certificates issued on or after the effective date of this administrative regulation under a group long-term care insurance policy, which policy was in force at the time this administrative regulation became effective, the provisions of this section shall apply on the policy anniversary following twelve (12) months after the effective date of this administrative regulation.~~

~~(2) An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the executive director at least thirty (30) days prior to the notice to the policyholders and shall include:~~

~~(a) Information required by Section 6 of this administrative regulation;~~

~~(b) Certification by a qualified actuary that:~~

~~1. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated; and~~

~~2. The premium rate filing is in compliance with the provisions of this section;~~

~~(c) An actuarial memorandum justifying the rate schedule change request that includes:~~

~~1. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;~~

~~a. Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;~~

~~b. The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;~~

~~c. The projections shall demonstrate compliance with subsection (3) of this section; and~~

~~d. For exceptional increases:~~

~~(i) The projected experience shall be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and~~

~~(ii) If the executive director determines as provided in subsection (12)(b) of this section that offsets may exist, the insurer shall~~

~~use appropriate net projected experience;~~

~~2. Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;~~

~~3. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;~~

~~4. A statement that policy design, underwriting, and claims adjudication practices have been taken into consideration; and~~

~~5. If it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates;~~

~~(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the executive director; and~~

~~(e) Sufficient information for review and approval of the premium rate schedule increase by the executive director.~~

~~(3) Premium rate schedule increases shall be determined in accordance with the following requirements:~~

~~(a) Exceptional increases shall provide that seventy (70) percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;~~

~~(b) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:~~

~~1. The accumulated value of the initial earned premium times fifty-eight (58) percent;~~

~~2. Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;~~

~~3. The present value of future projected initial earned premiums times fifty-eight (58) percent; and~~

~~4. Eighty-five (85) percent of the present value of future projected premiums not included in subparagraph 3 of this paragraph on an earned basis;~~

~~(c) If a policy form has both exceptional and other increases, the values in paragraph (b)2 and 4 of this subsection shall also include seventy (70) percent for exceptional rate increase amounts; and~~

~~(d) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.~~

~~(4) For each rate increase that is implemented, the insurer shall file for review by the executive director updated projections, as defined in subsection (2)(c) of this section, annually for the next three (3) years and include a comparison of actual results to projected values.~~

~~(a) The executive director may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections.~~

~~(b) For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the executive director.~~

~~(5)(a) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in subsection (2)(c)1 of this section, shall be filed for review by the executive director every five (5) years following the end of the required period in subsection (4) of this section.~~

~~(b) For group insurance policies that meet the conditions in subsection (11) of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the executive director.~~

~~(6)(a) If the executive director has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (3) of this section, the executive director may require the insurer to implement any of the following:~~

~~1. Premium rate schedule adjustments; or~~

~~2. Other measures to reduce the difference between the projected and actual experience.~~

~~(b) In determining whether the actual experience adequately matches the projected experience, consideration shall be given to subsection (2)(c)5 of this section, if applicable.~~

~~(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:~~

~~(a) A plan, subject to executive director's approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect. If a plan is not filed, the executive director may impose the condition in subsection (8) of this section; and~~

~~(b) The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (3) of this section had the greater of the original anticipated lifetime loss ratio or fifty-eight (58) percent been used in the calculations described in subsection (3)(b)1 and 3 of this section.~~

~~(8)(a) For a rate increase filing that meets the following criteria, the executive director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapsation has occurred or is anticipated:~~

~~1. The rate increase is not the first rate increase requested for the specific policy form or forms;~~

~~2. The rate increase is not an exceptional increase; and~~

~~3. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.~~

~~(b) If significant adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the executive director may determine that a rate spiral exists.~~

~~(c) Following a determination that a rate spiral exists, the executive director may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one (1) or more reasonably comparable products being offered by the insurer or its affiliates.~~

~~1. The offer shall:~~

~~a. Be subject to the approval of the executive director;~~

~~b. Be based on actuarially sound principles, except for attained age; and~~

~~c. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.~~

~~2. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. If there is a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:~~

~~a. The maximum rate increase determined based on the combined experience; or~~

~~b. The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten (10) percent.~~

~~(9) If the executive director determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the executive director may, in addition to the provisions of subsection (8) of this section, prohibit the insurer from either of the following:~~

~~(a) Filing and marketing comparable coverage for a period of up to five (5) years; or~~

~~(b) Offering all other similar coverages and may limit the insurer's marketing of new applications to the products subject to recent premium rate schedule increases.~~

~~(10) Subsections (1) through (9) of this section shall not apply~~

~~to policies for which the long-term care benefits provided by the policy are incidental, if the policy complies with all of the following provisions:~~

~~(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;~~

~~(b) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:~~

~~1. KRS 304.15-310;~~

~~2. KRS 304.15-315;~~

~~3. 806 KAR 15.010; and~~

~~4. 806 KAR 15.030;~~

~~(c) The policy meets the disclosure requirements of Section 15(4)(c) of this administrative regulation;~~

~~(d) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:~~

~~1. Policy illustrations that meet the requirements of Section 29 of this administrative regulation; and~~

~~2. Disclosure requirements in 806 KAR 15.010 and 806 KAR 15.030; and~~

~~(e) An actuarial memorandum is filed with the insurance office that includes:~~

~~1. A description of the basis on which the long-term care rates were determined;~~

~~2. A description of the basis for the reserves;~~

~~3. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;~~

~~4. A description and a table of each actuarial assumption used. For expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;~~

~~5. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;~~

~~6. The estimated average annual premium per policy and the average issue age;~~

~~7. A statement as to whether underwriting is performed at the time of application.~~

~~a. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting; and~~

~~b. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and~~

~~8. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.~~

~~(11) Subsections (6) and (8) of this section shall not apply to group insurance policies if:~~

~~(a) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or~~

~~(b) The policyholder, and not the certificate holders, pays a material portion of the premium, which shall not be less than twenty (20) percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.~~

~~(12) The executive director:~~

~~(a) May request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase; and~~

~~(b) In determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claim costs.~~

~~Section 17. Filing Requirement for a Group Policy Issued in Another State. Prior to an insurer offering group long-term care insurance issued in another state to a resident of Kentucky pursuant to KRS 304.14-610, it shall file with the executive director evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in Kentucky.~~

~~Section 18. Filing Requirements for Advertising. (1) Every insurer providing long-term care insurance or benefits in Kentucky shall provide a copy of any long-term care insurance advertisement intended for use in Kentucky whether through written, radio, or television medium to the executive director for review or approval by the executive director in accordance with KRS 304.14-620; and~~

~~(2) All advertisements shall be retained by the insurer for at least three (3) years from the date the advertisement was first used.~~

~~Section 19. Standards for Marketing. (1) Every insurer marketing long-term care insurance coverage in this state, directly or through its agents, shall:~~

~~(a) Establish marketing procedures and agent training requirements to assure that:~~

~~1. Any marketing activities, including any comparison of policies, by its agent or other producers will be fair and accurate; and~~

~~2. Excessive insurance is not sold or issued.~~

~~(b) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."~~

~~(c) Provide to the applicant copies of the disclosure forms required in Section 6(7) of this administrative regulation.~~

~~(d) Inquire and otherwise make every reasonable effort to identify:~~

~~1. Whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance; and~~

~~2. The types and amounts of this insurance.~~

~~(e) For qualified long-term care insurance contracts, not be required to make an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance, in accordance with paragraph (d) of this section.~~

~~(f) Establish auditable procedures for verifying compliance with the requirements of this subsection.~~

~~(g) At solicitation, provide written notice to the prospective policyholder and certificate holder that:~~

~~1. Kentucky's Insurance Programs for Seniors (KIPS) is available and the address and telephone number of the program, and~~

~~2. The Kentucky State Health Insurance Assistance Program (SHIP) is available and the address and telephone number of the program.~~

~~(h) For long-term care insurance policies and certificates, use the terms, "noncancellable" or "level premium" only if the policy or certificate conforms to Section 3(1)(c) and (d) of this administrative regulation.~~

~~(i) Provide an explanation of contingent benefit upon lapse provided for in Section 22(4)(c) of this administrative regulation.~~

~~(2) In addition to the practices prohibited in KRS Chapter 304.12, the following acts and practices shall be prohibited:~~

~~(a) Twisting;~~

~~(b) High pressure tactics;~~

~~(c) Cold load advertising; and~~

~~(d) Misrepresentation.~~

~~(3)(a) With respect to the obligations set forth in this subsection, the primary responsibility of an association, as defined in KRS 304.14-600(4)(b), if endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions.~~

~~(b) Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by the associations to ensure that members of the associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.~~

~~(c) The insurer shall file with the insurance office the following material:~~

~~1. The policy and certificate;~~

~~2. A corresponding outline of coverage; and~~

~~3. All advertisements requested by the insurance office pursuant to Section 18(1) of this administrative regulation.~~

~~(d) The association shall disclose in any long-term care insurance solicitation:~~

~~1. The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees, and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and~~

~~2. A brief description of the process under which the policies and the insurer issuing the policies were selected.~~

~~(e) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.~~

~~(f) The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies and the compensation arrangements made with the insurer.~~

~~(g) Except for qualified long-term care insurance contracts, the association shall also:~~

~~1. At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter if there is a material change;~~

~~2. Actively monitor the marketing efforts of the insurer and its agents; and~~

~~3. Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.~~

~~(h) A group long-term care insurance policy or certificate shall not be issued to an association unless the insurer files with the executive director the information required in this subsection.~~

~~(i) An insurer shall not issue a long-term care policy or certificate to an association or continue to market the policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this subsection.~~

~~(j) Failure to comply with the filing and certification requirements of this section shall constitute an unfair trade practice in violation of KRS 304.12-130.~~

~~Section 20. Suitability. (1) This section shall not apply to life insurance policies that accelerate benefits for long-term care.~~

~~(2) An insurer marketing long-term care insurance shall:~~

~~(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;~~

~~(b) Train its agents in the use of its suitability standards; and~~

~~(c) Maintain a copy of its suitability standards and make them available for inspection upon request by the executive director.~~

~~(3)(a) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:~~

~~1. The applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;~~

~~2. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and~~

~~3. The values, benefits, and costs of the applicant's existing insurance, if any, as compared to the values, benefits, and costs of the recommended purchase or replacement.~~

~~(b) The insurer, and if an agent is involved, the agent, shall make reasonable efforts to obtain the information set out in paragraph (a) of this subsection.~~

~~1. The insurer shall present to the applicant, at or prior to application, a "Long-term Care Insurance Personal Worksheet", HIPMC-LTC-1 (09/01), incorporated by reference in this administrative regulation.~~

~~2. The information in the format contained in HIPMC-LTC-1 (09/01) shall be in not less than twelve (12) point type.~~

~~(c) The issuer may request the applicant to provide additional information to comply with its suitability standards.~~

~~(d) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.~~

~~(e) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet shall be prohibited.~~

~~(4) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.~~

~~(5) An agent shall use the suitability standards developed by the insurer in marketing long-term care insurance.~~

~~(6) When the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-term Care Insurance", incorporated by reference in this administrative regulation as HIPMC-LTC-5 (09/01) shall be provided.~~

~~(7) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer shall:~~

~~(a) Reject the application; or~~

~~(b) Send to the applicant a:~~

~~1. "Long-term Care Suitability Letter", incorporated by reference in this administrative regulation as HIPMC-LTC-6 (09/01); or~~

~~2. Letter approved by the executive director as being similar to the HIPMC-LTC-6 (09/01).~~

~~(8) If the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent.~~

~~(9) Either the applicant's returned HIPMC-LTC-6 (09/01) or a record of the alternative method of verification shall be made part of the applicant's file.~~

~~(10) The insurer shall report annually to the executive director:~~

~~(a) The total number of applications received from Kentucky residents;~~

~~(b) The number of those applicants who declined to provide information on the personal worksheet;~~

~~(c) The number of those applicants who did not meet the suitability standards; and~~

~~(d) The number of those applicants who chose to confirm after receiving a suitability letter.~~

~~Section 21. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.~~

~~Section 22. Nonforfeiture Benefit Requirement. (1) This section shall not apply to life insurance policies or riders containing accelerated long-term care benefits.~~

~~(2) Except as provided in subsection (3) of this section, a long-term care insurance policy shall not be delivered or issued for delivery unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit.~~

~~(a) The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy.~~

~~(b) If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rate.~~

~~(3) If a group long-term care insurance policy is issued, the offer required in subsection (2) of this section shall be made to:~~

~~(a) The group policyholder; or~~

~~(b) If the policy is issued as group long-term care insurance, as defined in KRS 304.14-600(4)(d), other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.~~

~~(4) A nonforfeiture benefit offer pursuant to subsection (2) of this section shall meet the following requirements:~~

~~(a) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits;~~

~~(b) The nonforfeiture benefit included in the offer shall be the benefit described in subsection (5) of this section; and~~

~~(c) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage required pursuant to KRS 304.14-615(7), or other materials given to the prospective policyholder.~~

~~(5) If the offer required to be made under subsection (2) of this section is rejected, the insurer shall provide the contingent benefit upon lapse described in subsection (6) of this section.~~

~~(6)(a) After rejection of the offer required under subsection (2) of this section, for individual and group policies without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.~~

~~(b) If a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.~~

~~(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in this paragraph based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased:~~

~~Triggers for a Substantial Premium Increase~~	
~~Issue Age~~	~~Percent Increase Over Initial Premium~~
~~29 and under~~	~~200%~~
~~30-34~~	~~190%~~
~~35-39~~	~~170%~~
~~40-44~~	~~150%~~
~~45-49~~	~~130%~~
~~50-54~~	~~110%~~
~~55-59~~	~~90%~~
~~60~~	~~70%~~
~~61~~	~~66%~~
~~62~~	~~62%~~
~~63~~	~~58%~~
~~64~~	~~54%~~
~~65~~	~~50%~~
~~66~~	~~48%~~
~~67~~	~~46%~~
~~68~~	~~44%~~
~~69~~	~~42%~~
~~70~~	~~40%~~
~~71~~	~~38%~~
~~72~~	~~36%~~
~~73~~	~~34%~~
~~74~~	~~32%~~
~~75~~	~~30%~~
~~76~~	~~28%~~
~~77~~	~~26%~~
~~78~~	~~24%~~
~~79~~	~~22%~~
~~80~~	~~20%~~
~~81~~	~~19%~~
~~82~~	~~18%~~
~~83~~	~~17%~~
~~84~~	~~16%~~
~~85~~	~~15%~~
~~86~~	~~14%~~
~~87~~	~~13%~~
~~88~~	~~12%~~
~~89~~	~~11%~~
~~90 and over~~	~~10%~~

~~(d) Unless otherwise required by Section 6(8) of this administrative regulation, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase, set forth in paragraph (c) of this subsection.~~

~~(e) On or before the effective date of a substantial premium increase as defined in paragraph (c) of this subsection, an insurer shall:~~

~~1. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;~~

~~2. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection (5) of this section. This option may be elected at any time during the 120-day period referenced in paragraph (c) of this subsection; and~~

~~3. Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in paragraph (c) of this subsection shall be deemed to be the election of the offer to convert in subparagraph 2 of this paragraph.~~

~~(7) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, shall be as described in this subsection:~~

~~(a) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) shall be payable for a qualifying claim, except the lifetime maximum dollars or days of benefits shall be determined as specified in paragraph (b) of this subsection.~~

~~(b) The standard nonforfeiture credit shall be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits.~~

~~1. An insurer may offer additional shortened benefit period options, if the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration;~~

~~2. The minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse; and~~

~~3. The calculation of the nonforfeiture credit shall be subject to the limitation of subsection (6) of this section.~~

~~(c)1. Except as provided by subparagraph 2 of this paragraph, the nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three (3) years and thereafter.~~

~~2. Notwithstanding subparagraph 1 of this paragraph, for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:~~

~~a. The end of the tenth year following the policy or certificate issue date; or~~

~~b. The end of the second year following the date the policy or certificate is no longer subject to attained age rating.~~

~~(d) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.~~

~~(8) All benefits paid by an insurer while the policy or certificate is in premium paying status and in the paid-up status shall not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.~~

~~(9) There shall not be a difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.~~

~~(10) The requirements set forth in this section shall apply twelve (12) months after the effective date of this administrative regulation:~~

~~(a) Except as provided in paragraph (b) of this subsection, the provisions of this section shall apply to any long-term care policy issued in Kentucky on or after the effective date of this administrative regulation.~~

~~(b) For certificates issued on or after the effective date of this administrative regulation, under a group long-term care insurance policy in force at the time this administrative regulation became effective, the provisions of this section shall not apply.~~

~~(11) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section 15 of this administrative regulation, treating the policy as a whole.~~

~~(12) To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (6)(c) of this section, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.~~

~~(13) A nonforfeiture benefit for qualified long-term care insurance contracts that are level-premium contracts shall be offered that meets the following requirements:~~

~~(a) The nonforfeiture provision shall be appropriately captioned;~~

~~(b) The nonforfeiture provision shall provide a benefit available if there is a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium-paying contracts approved by the executive director for the same contract form; and~~

~~(c) The nonforfeiture provision shall provide at least one (1) of the following:~~

~~1. Reduced paid-up insurance;~~

~~2. Extended term insurance;~~

~~3. Shortened benefit period, or~~

~~4. Other similar offerings approved by the executive director.~~

~~Section 23. Standards for Benefit Triggers. (1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment.~~

~~(2) Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.~~

~~(3)(a) Activities of daily living shall include at least the following as defined in Section 2 of this administrative regulation and in the policy:~~

~~1. Bathing;~~

~~2. Continence;~~

~~3. Dressing;~~

~~4. Eating;~~

~~5. Toileting, and~~

~~6. Transferring;~~

~~(b) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in paragraph (a) of this subsection if they are defined in the policy.~~

~~(4) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate and the provisions shall not restrict, and shall not be in lieu of, the requirements contained in subsections (1), (2), and (3) of this section.~~

~~(5) For purposes of this section the determination of a deficiency shall not be more restrictive than:~~

~~(a) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or~~

~~(b) If the deficiency is due to the presence of a cognitive impairment, needing supervision or verbal cueing by another person in order to protect the insured or others.~~

~~(6) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.~~

~~(7) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.~~

~~(8) A long-term care insurance policy shall cover services as required by KRS 304.14-617.~~

~~(9) The requirements set forth in subsections (1) through (8) of this section shall apply twelve (12) months after the effective date of this administrative regulation as follows:~~

~~(a) Except as provided in paragraph (b) of this subsection, the provisions of this section shall apply to a long-term care policy issued in Kentucky on or after the effective date of this administrative regulation.~~

~~(b) For certificates issued on or after the effective date of this administrative regulation, under a group long-term care insurance policy that was in force at the time this administrative regulation became effective, the provisions of this section shall not apply.~~

~~Section 24. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts. (1) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.~~

~~(2) A qualified long-term care insurance contract shall condition the payment of benefits on a certified determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity or to severe cognitive impairment.~~

~~(3) Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (2) of this section shall be performed by a licensed health care practitioner.~~

~~(4) Certifications required pursuant to subsection (2) of this section may be performed by a licensed health care professional at the direction of the carrier if it is reasonably necessary with respect to a specific claim, except that if a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status, the certification shall not be rescinded and additional certifications shall not be performed until after the expiration of the ninety (90) day period.~~

~~(5) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.~~

~~Section 25. Standard Format Outline of Coverage. This section of the administrative regulation implements, interprets, and makes specific the provisions of KRS 304.14-615(7) in prescribing a standard format and the content of an outline of coverage.~~

~~(1) The outline of coverage shall be a freestanding document, using no smaller than ten (10) point type.~~

~~(2) The outline of coverage shall not contain material of an advertising nature.~~

~~(3) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by any means which provide prominence equivalent to the capitalization or underscoring.~~

~~(4) Use of the text and sequence of text of the standard format outline of coverage shall be mandatory, except as specifically indicated.~~

~~(5) Format for outline of coverage:~~

~~(INSURER NAME)~~
~~(ADDRESS-CITY & STATE)~~
~~(TELEPHONE NUMBER)~~
~~LONG-TERM CARE INSURANCE~~
~~OUTLINE OF COVERAGE~~
~~(Policy Number or Group Master Policy and Certificate Number)~~

~~(Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, shall appear as follows in the outline of coverage):~~

~~Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)~~

~~(a) This policy is (an individual policy of insurance or a group policy) which was issued in the (indicate jurisdiction in which group policy was issued).~~

~~(b) PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the indi-~~

~~vidual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!~~

~~(c) FEDERAL TAX CONSEQUENCES.~~

~~This (policy or certificate) is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.~~

~~OR~~

~~Federal Tax Implications of this (policy or certificate). This (policy or certificate) is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the (policy or certificate) may be taxable as income.~~

~~(d) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.~~

~~1. (For long-term care health insurance policies or certificates, one (1) of the following permissible policy renewability provisions shall be described):~~

~~a. (Policies and certificates that are guaranteed renewable shall contain the following statement:) RENEWABILITY: THIS POLICY (CERTIFICATE) IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy (certificate), to continue this policy as long as you pay your premiums on time. (Insurer) cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.~~

~~b. (Policies and certificates that are noncancellable shall contain the following statement:) RENEWABILITY: THIS POLICY (CERTIFICATE) IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. (Insurer) cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, (Insurer) may increase your premium at that time for those additional benefits.~~

~~2. (For group coverage, continuation/conversion provisions applicable to the certificate and group policy shall be specifically described.)~~

~~3. (The outline of coverage shall describe waiver of premium provisions or state that there are no premium provisions.)~~

~~(e) TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.~~

~~(In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, the outline of coverage shall state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.)~~

~~(f) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.~~

~~1. (A brief description of the right to return "free look" provision of the policy shall be provided).~~

~~2. (A statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate shall be included. If the policy contains these provisions, a description of them shall be included).~~

~~(g) THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the insurer.~~

~~1. (For agents) Neither (insert insurer name) nor its agents represent Medicare, the federal government, or any state government.~~

~~2. (For direct response) (insert insurer name) is not representing Medicare, the federal government, or any state government.~~

~~(h) LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.~~

~~This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations) (waiting periods) and (coinsurance) requirements. (This paragraph shall be modified if the policy is not an indemnity policy).~~

~~(i) BENEFITS PROVIDED BY THIS POLICY.~~

~~1. (Covered services, related deductible(s), waiting periods, elimination periods, and benefit maximums).~~

~~2. (Institutional benefits, by skill level).~~

~~3. (Noninstitutional benefits, by skill level).~~

~~4. Eligibility for payment of benefits.~~

~~a. (Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined and described as part of the outline of coverage.)~~

~~b. (Any additional benefit triggers shall also be explained. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this shall be specified.)~~

~~(j) LIMITATIONS AND EXCLUSIONS.~~

~~(The outline of coverage shall describe:~~

~~1. Preexisting conditions;~~

~~2. Noneligible facilities or providers;~~

~~3. Noneligible levels of care, such as unlicensed providers, care, or treatment provided by a family member;~~

~~4. Exclusions and exceptions; and~~

~~5. Limitations).~~

~~(This section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph (i) of this subsection.)~~

~~THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.~~

~~(k) RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, the following shall be indicated.~~

~~1. That the benefit level will not increase over time;~~

~~2. Any automatic benefit adjustment provisions;~~

~~3. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;~~

~~4. If there is a guarantee, whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and~~

~~5. Whether there will be any additional premium charge imposed, and how that is to be calculated).~~

~~(l) ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.~~

~~(The outline of coverage shall state that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. It shall specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for these insureds).~~

~~(m) PREMIUM.~~

~~(1. The total annual premium for the policy shall be stated; and~~

~~2. If the premium varies with an applicant's choice among benefit options, the portion of annual premium which corresponds to each benefit option shall be indicated.)~~

~~(n) ADDITIONAL FEATURES.~~

~~(1. The outline of coverage shall indicate if medical underwriting is used; and~~

~~2. Describe other important features.)~~

~~(o) CONTACT THE SENIOR HEALTH INSURANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFI-~~

~~CATE.~~

~~Section 26. Requirement to Deliver Shopper's Guide. (1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the executive director, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.~~

~~(a) For agent solicitations, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.~~

~~(b) For direct response solicitations, the shopper's guide shall be presented in conjunction with any application or enrollment form.~~

~~(2) Life insurance policies or riders containing accelerated long-term care benefits shall not be required to furnish the shopper's guide, except they shall furnish the policy summary required under KRS 304.14-615.~~

~~Section 27. Penalties. In addition to any other penalties provided by the laws of Kentucky, any insurer or agent found to have violated any requirement of Kentucky relating to the regulation or marketing of long-term care insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to $10,000, whichever is greater.~~

~~Section 28. Permitted Compensation Arrangements. (1) Upon replacement the replacing insurer shall not provide compensation to its agents or other producers greater than 200 percent of the renewal compensation payable by the replacing insurer on renewal policies.~~

~~(2) The commission or other compensation provided in subsequent (renewal) years by the replacing insurer shall be the same as that provided in the second year or period and shall be provided for a reasonable number of renewal years.~~

~~(3) If long-term care insurance is provided under annuities or life insurance policies or riders, the requirements of this section shall apply only to the commissions or other compensation attributable to the long-term care insurance provided by these policies or riders.~~

~~Section 29. Illustrations. (1)(a) An illustration used in the sale of a life insurance policy that funds long-term care benefits, shall satisfy the applicable requirements of this administrative regulation, be clearly labeled "life insurance illustration", and contain the following basic information:~~

~~1. Name of insurer;~~

~~2. Name and business address of producer or insurer's authorized representative, if any;~~

~~3. Name, age, and sex of proposed insured, except if a composite illustration is permitted under this regulation;~~

~~4. Underwriting or rating classification upon which the illustration is based;~~

~~5. Generic name of policy, the company product name, if different, and form number;~~

~~6. Initial death benefit, and~~

~~7. Dividend option election or application of nonguaranteed elements, if applicable.~~

~~(b) If using an illustration in the sale of a life insurance policy that funds long-term care benefits, an insurer or its producers or other authorized representatives shall not:~~

~~1. Represent the policy as anything other than a life insurance policy;~~

~~2. Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;~~

~~3. State or imply that the payment or amount of nonguaranteed elements is guaranteed;~~

~~4. Use an illustration that does not comply with the requirements of this administrative regulation;~~

~~5. Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;~~

~~6. Provide an applicant with an incomplete illustration;~~

~~7. Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;~~

~~8. Use the term "vanish" or "vanishing premium", or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;~~

~~9. Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or~~

~~10. Use an illustration that is not "self-supporting".~~

~~(c) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.~~

~~(2)(a) Format. A basic illustration shall conform with the following requirements.~~

~~1. The illustration shall be labeled with the date on which it was prepared;~~

~~2. Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven (7) page illustration shall be labeled "page 4 of 7 pages");~~

~~3. The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified;~~

~~4. If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force;~~

~~5. The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;~~

~~6. Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;~~

~~7. If the illustration shows any nonguaranteed elements, they shall not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed;~~

~~8. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page one for guaranteed elements");~~

~~9. The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender;~~

~~10. The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable;~~

~~11. Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form;~~

~~12. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:~~

~~a. The benefits and values are not guaranteed;~~

~~b. The assumptions on which they are based are subject to change by the insurer; and~~

~~c. Actual results may be more or less favorable;~~

~~13 a. If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration shall clearly disclose that:~~

~~(i) A charge continues to be required; and~~

~~(ii) Depending on actual results, the premium payer may need to continue or resume premium outlays.~~

~~b. Similar disclosure shall be made for premium outlay of less or amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up; and~~

~~14. If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract~~

~~premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.~~

~~(b) Narrative summary. A basic illustration shall include the following:~~

~~1. A brief description of the policy being illustrated, including a statement that it is a life insurance policy;~~

~~2. A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;~~

~~3. A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;~~

~~4. Identification and a brief description of column headings and key terms used in the illustration; and~~

~~5. A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."~~

~~(c) Numeric summary.~~

~~1. Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium.~~

~~2. This summary shall be shown for at least policy years five (5), ten (10), and twenty (20), and at age seventy (70), if applicable, on the three (3) bases shown below. For multiple life policies the summary shall show policy years five (5), ten (10), twenty (20) and thirty (30).~~

~~a. Policy guarantees;~~

~~b. Insurer's illustrated scale;~~

~~c. Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:~~

~~(i) Dividends at fifty (50) percent of the dividends contained in the illustrated scale used;~~

~~(ii) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and~~

~~(iii) All nonguaranteed charges, including term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.~~

~~3. If coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three (3) bases.~~

~~(d) Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner for an illustration provided at time of delivery, as required in this administrative regulation.~~

~~1. A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."~~

~~2. A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."~~

~~(e) Tabular detail.~~

~~1. A basic illustration shall include the following for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity, or final expiration; and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:~~

~~a. The premium outlay and mode the applicant plans to pay and the contract premium, as applicable.~~

~~b. The corresponding guaranteed death benefit, as provided in the policy, and~~

~~c. The corresponding guaranteed value upon surrender, as provided in the policy.~~

~~2. For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.~~

~~3. Nonguaranteed elements may be shown if described in the contract.~~

~~a. If an illustration is for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends.~~

~~b. If any nonguaranteed elements are shown they shall be shown at the same durations as the corresponding guaranteed elements, if any.~~

~~c. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.~~

~~(3)(a) A supplemental illustration may be provided if:~~

~~1. It is appended to, accompanied by or preceded by, a basic illustration that complies with this administrative regulation;~~

~~2. The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;~~

~~3. It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed, and~~

~~4. For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.~~

~~(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.~~

~~Section 30. Incorporated by Reference. (1) The following material is incorporated by reference:~~

~~(a) Long-term Care Insurance Personal Worksheet, HIPMC-LTC-1 (09/01);~~

~~(b) Long-term Care Insurance Potential Rate Increase Disclosure Form, HIPMC-LTC-2 (09/01);~~

~~(c) Rescission Reporting Form for Long-term Care Policies, HIPMC-LTC-3 (09/01);~~

~~(d) Claims Denial Reporting Form for Long-term Care Insurance, HIPMC-LTC-4 (09/01);~~

~~(e) Things You Should Know Before You Buy Long-term Care Insurance, HIPMC-LTC-5 (09/01); and~~

~~(f) Long-term Care Insurance Suitability Letter, HIPMC-LTC-6 (09/01).~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Office's internet web site at http://doi.ppr.ky.gov/kentucky/.]~~

SHARON CLARK, Commissioner
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 12, 2008 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. (EST) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do

not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist, Kentucky Department of Insurance, 215 West Main Street; P.O. Box 517; Frankfort, Kentucky 40602, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does. This administrative regulation establishes minimum standards for long-term care insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum standards for long-term care insurance policies and certificates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304 2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.14-615(1) requires the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for the manner, content, and sale of long-term care insurance policies. KRS 304.14-620 requires the Executive Director of Insurance to promulgate administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes the minimum standards for long-term care insurance policies and certificates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist insurers by providing the minimum standards for long-term policies and certificates, including the necessary forms, disclosures and or reports for these policies certificates.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will clarify language, correct citations, amend and add material incorporated by reference, and incorporate language to comply with the NAIC model regulation, KRS 304.14-640 to KRS 304.14-644, and federal requirements.

(b) The necessity of the amendment to this administrative regulation. This amendment is necessary to clarify language, correct citations, amend and add material incorporated by reference, to implement the Long-term Care Partnership Insurance Program and incorporate language to comply with the NAIC model regulation, KRS 304.14-640 to KRS 304.14-644, and federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 304 2-110(2), which authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code. KRS 304.14-615(1) requires the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for the manner, content, and sale of long-term care insurance policies. KRS 304.14-620 requires the Executive Director of Insurance to promulgate administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304.38. KRS 304.14-642 requires the Office of Insurance to approve long-term partnership policies that comply with federal and state law. This administrative regulation establishes forms and reports for use by health insurers and independent review entities.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing minimum standard for long-term policies and certificates, including the necessary forms, disclosures and or reports for these policies certificates in compliance with Kentucky and federal laws.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately forty-seven (47) insurers that offer long-term care insurance.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurers offering long-term care insurance will be required to amend policies and certificates as necessary to comply with this regulation. Since the majority of amendments to this administrative regulation were necessary to correct or clarify existing provisions, limited impact is expected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):A draft of this regulation and request for estimates of cost to implement the regulation were sent to affected entities for comment, however, only three insurers provided responses. Off the three respondents, one insurer responded that it would take twenty (20) hours to implement this amendment; two insurers responded that the cost of compliance would be $27,500 and $2,500. DOI plans to contact these particular insurers to discuss these cost estimates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The resulting benefits are that insurers will be in compliance with this administrative regulation and long-term care insurance products will be offered in accordance with the NAIC Long-term Care Insurance model, which is necessary to implement the Kentucky Long-term Care Partnership Insurance Program in accordance with KRS 304.14-640 through 304.14-644.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: DOI does not anticipate any direct or indirect costs to initially implement the amendment to this administrative regulation.

(b) On a continuing basis: DOI does not anticipate any direct or indirect costs to implement the amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to implement and enforce this administrative regulation is the existing budget of the DOI.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. DOI does not anticipate that the implementation of this amendment will require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation will apply equally to all Kentucky licensed insurers offering long-term care insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance is promulgating this administrative regulation to minimum standard for long-term policies and certificates, including the necessary forms, disclosures and or reports for these policies certificates. This amendment to an administrative regulation will not produce a significant impact to the Department of Insurance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(2) authorizes the Executive Director of Insurance to promulgate administrative regulations. KRS 304.14-615(1) requires the Executive Director of Insurance to promulgate administrative regulations establishing minimum standards for the manner, content, and sale of long-term care insurance policies. KRS 304.14-620 requires the Executive Director of Insurance to promulgate administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 authorizes the Executive Director of Insurance to promulgate reasonable administrative regulations necessary for the proper administration of KRS Chapter 304 38.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for subsequent years for state or local governments.

(c) How much will it cost to administer this program for the first year? The Department of Insurance should not incur significant costs to administer this amendment to an existing administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? The Department of Insurance should not incur costs to administer this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Enforcement
(Amendment)

810 KAR 1:018. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.210(9), 230.215, 230.240(2), 230.260(1), (2), (3), (6), (7), 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260 (3), 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Authority to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.240(2) requires the Authority to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions. (1) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(2) "Commission [~~Authority~~] laboratory" means a laboratory chosen by the commission [~~Authority~~] to test saliva, urine, blood, or other samples or specimens from horses taken under the supervision of the commission [~~Authority~~] veterinarian.

(3) "Location under the jurisdiction of the commission [~~Authority~~]" or "Association grounds" means a track as defined in KRS 230.210(9).

(4) "Permitted NSAIDs" means the following Permitted Nonsteroidal Anti-inflammatory Drugs: Phenylbutazone, Flunixin, and Ketoprofen, if administered in compliance with Section 8 of this administrative regulation.

(5) "Positive finding" means the commission [~~Authority~~] laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample. For the drugs, medications, or substances listed in Section 2(3), 6, or 8 of this administrative regulation, it shall be necessary to have a finding in excess of the established concentration level as provided in this administrative regulation for the finding to be considered a positive finding. Positive findings also include:

(a) Substances present in the horse in excess of concentrations at which such substances could occur naturally; and

(b) Substances foreign to a horse at concentrations that cause interference with testing procedures.

(6) "Split sample" means the split sample portion of the saliva, urine, blood, or other sample or specimen taken under the supervision of the commission [~~Authority~~] veterinarian.

(7) "Split sample laboratory" means the laboratory approved by the commission [~~Authority~~] to test the split sample portion of the saliva, urine, blood, or other samples or specimens from horses taken under the supervision of the commission [~~Authority~~] veterinarian.

(8) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining sample specimens for prerace and postrace testing.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications in excess of established threshold concentrations set forth in this administrative regulation shall be prohibited. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for permitted NSAIDs are set forth in Section 8 of this administrated regulation.

(4) A substance present in a horse in excess of a concentration at which the substance could occur naturally shall be prohibited if it affects the performance of the horse. It shall be the responsibility of the commission [~~Authority~~] to prove that the substance was in

excess of normal concentration levels and that it affected the performance of the horse.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A saliva, urine, blood, or other sample or specimen from the horse was taken under the supervision of the commission [~~Authority~~] veterinarian promptly after a horse ran in a race; and

(b) The commission [~~Authority~~] laboratory presents to the commission [~~Authority~~] a report of a positive finding.

(6) The commission [~~Authority~~] shall utilize the "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08,[~~(11-05)~~] for classification of drugs and medications violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 1:028.

Section 3. Treatment Restrictions. (1) Except as provided in Section 4 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [~~Authority~~] shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission [~~Authority~~].

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide and the permitted adjunct bleeder medications as set forth in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [~~Authority~~] shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission [~~Authority~~].

(4) A veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [~~Authority~~] shall use only one (1)-time disposable needles, and shall dispose of them in a container provided by the commission [~~Authority~~] veterinarian.

(5) If a person regulated by the commission [~~Authority~~] has a medical condition which makes it necessary to have a needle and syringe at a location under the jurisdiction of the commission [~~Authority~~], the person shall request prior permission from the stewards and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards may grant approval for a person to possess and use a needle and syringes at a location under the jurisdiction of the commission [~~Authority~~] but may also establish necessary restrictions and limitations.

(6) An commission [~~Authority~~] employee may accompany a veterinarian at a location under the jurisdiction of the commission [~~Authority~~] and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission [~~Authority~~].

Section 5. Antiulcer Medications The following antiulcer medications shall be permitted to be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 mg/kg;

(2) Omeprazole (Gastrogard®): two and two-tenths (2.2) grams; and

(3) Ranitidine (Zantac®): eight (8) mg/kg

Section 6. Furosemide and Adjunct Bleeder Medication; Use on Race Day. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race.

(2) The use of furosemide shall be permitted under the following circumstances:

(a) Furosemide shall be administered at a location under the jurisdiction of the commission [~~Authority~~], by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b) The syringe employed in the injection shall be provided immediately to the commission [~~Authority~~] veterinarian, steward, or commission [~~Authority~~] employee, if requested, to determine if there has been a violation of this administrative regulation.

(c) The furosemide dosage administered shall not exceed 500 mg, nor be less than 150 mg.

(d) The specific gravity of a post-race urine sample shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse eligible to receive furosemide pursuant to Section 7 of this administrative regulation that does not show a detectable concentration of the drug in the post-race urine, plasma, or serum shall be in violation of this administrative regulation.

(3) Up to two (2) of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

(a) Aminocaproic acid:

(b) Carbazochrome:

(c) Conjugated estrogens; and

(d) Tranexamic acid.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to race with furosemide if the licensed trainer or licensed veterinarian determines that it would be in the horse's best interests to race with furosemide.

(b) Horses eligible for furosemide and entered to start may be monitored by an commission[~~Authority~~]-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2) A horse eligible for furosemide shall receive furosemide unless the licensed trainer or licensed veterinarian submits a written request to the commission [~~Authority~~] veterinarian to no longer administer furosemide to the horse. The request shall be on forms provided by the commission [~~Authority~~] veterinarian and shall be submitted to the commission[~~Authority~~]-approved representative not later than time of entry.

(3)(a) After a horse has been determined by the commission [~~Authority~~] veterinarian to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide for a period of sixty (60) calendar days unless it is determined by the trainer or veterinarian, in consultation with the commission [~~Authority~~] veterinarian, that it is detrimental to the welfare of the horse to not be on furosemide.

(b) If a horse is determined by the commission [~~Authority~~] veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs).

(1) The use of one (1) of the following NSAIDs shall be permitted by a single intravenous injection not less than twenty-four (24) hours before post time for the race in which the horse is entered provided the concentration in the horse's sample or specimen does not exceed the following levels when tested post race:

(a) Phenylbutazone - not to exceed five (5) micrograms per milliliter of plasma or serum;

(b) Flunixin - not to exceed twenty (20) nanograms per milliliter of plasma or serum;

(c) Ketoprofen - not to exceed ten (10) nanograms per milliliter of plasma or serum.

(2) Administration of one (1) of the permitted NSAIDs or any other NSAID within twenty-four (24) hours before post time for the race in which the horse is entered shall be prohibited.

(3)(a) The use of any NSAID other than permitted NSAIDs, and the use of multiple permitted NSAIDs shall be discontinued at least forty-eight (48) hours before post time for the race in which the horse is entered.

(b) A finding of phenylbutazone below a concentration of one (1) microgram per milliliter of plasma or serum shall not constitute a violation of this section.

(4) A horse that has been administered a NSAID shall be subject to a saliva, urine, blood, or other sample or specimen being taken under the supervision of the Authority veterinarian to determine the quantitative NSAID level present in the horse or the presence of other drugs in the horse.

Section 9. Anabolic steroids. (1) The presence of exogenous anabolic androgenic steroids ("AAS") is banned in a horse that is racing. The detection of any exogenous anabolic steroid or metabolite thereof in a post race biologic sample or a prerace biologic sample after the horse has been entered shall constitute a violation.

(2) The detection in a postrace sample of any endogenous anabolic steroid or metabolite thereof where the concentration of the AAS, its metabolites, markers and/or any relevant ratio(s) as have been published in peer-reviewed scientific literature deviates from naturally occurring physiological levels shall constitute a violation. For purposes of this rule, the following are deemed to be the naturally occurring physiological levels:

(a) Boldenone (free and conjugated) in male horses other than geldings - 15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses.

(b) Nandrolone (free and conjugated):

1. In geldings - 1 ng/ml in urine;

2. In fillies and mares - 1 ng/ml in urine;

3. In male horses other than geldings - 45 ng/ml of metabolite, 5Σ-estrane-3β, 17 Σ-diol in urine or a ratio in urine of 5Σ-estrane-3β, 17 Σ-diol to 5Σ-estrene-3β, 17 Σ-diol of >1:1;

(c) Testosterone (free and conjugated):

1. In geldings - 20 ng/ml in urine;

2. In fillies and mares - 55 ng/ml in urine;

3. Male horses: in amounts in excess of amounts existing naturally in the untreated horse at normal physiological concentrations.

(3) A horse may receive one (1) of the following medications: boldenone, nandrolone, or testosterone ("Therapeutic AAS") if each of the following conditions are met:

(a) The Therapeutic AAS must be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. Any owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration;

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant biological sample is taken from the horse;

3. The sample is tested for anabolic steroids by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and

4. The KHRC has received a report from the laboratory of a negative finding regarding the sample;

(c) A report from the commission laboratory of a negative finding in a pre-race sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a postrace sample will be treated as a violation even if there was a negative finding by the commission laboratory in a pre-race sample;

(d) The horse may not be entered to race until at least 60 days after the administration of the Therapeutic AAS to the horse;

(e) Procedures for administration of Therapeutic AAS:

1. Only a licensed veterinarian may administer a Therapeutic AAS; 2. Other treatment methods shall be investigated prior to consideration of the use of Therapeutic AAS and the medical records shall include documentation of the consideration of the alternative methods. The medical records for the horse shall include information documenting the necessity for the administration of the Therapeutic AAS;

3. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The Therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the Therapeutic AAS is administered;

d. The diagnosis and justification for administration of the Therapeutic AAS to the horse.

4. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication;

5. The Therapeutic AAS Administration Form shall be delivered electronically to the Equine Medical Director of the Kentucky Horse Racing Commission within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically the practitioner shall file the form with the Medical Director in person or through the mail. It is the responsibility of the submitting veterinarian to confirm receipt by the Equine Medical Director.

(4) If a horse is shipped into Kentucky from outside the state, prior to being eligible to race in Kentucky:

(a) The protocol in subsection (3) of this section shall be complied with in its entirety; or

(b)1. The trainer shall certify that he or she has had control of the horse for the sixty (60) days previous to racing and the horse has not been administered anabolic steroids; or

2. The trainer shall certify that he or she has not had control of the horse for the sixty (60) days previous to racing but shall acknowledge that he or she is responsible and accountable should a postrace test identify a violation of this administrative regulation.

(5) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for exogenous anabolic steroids or for amounts in excess of the concentrations referred to in paragraph (2) are subject to the penalties referred to in 810 KAR 1:028.

(6) The detection of more than one Therapeutic AAS or metabolite thereof in any sample in excess of the threshold level set forth in subsection (2) of this section shall constitute a violation for each anabolic steroid detected in excess of the one (1) Therapeutic AAS. There shall also be a violation if more than one Therapeutic AAS is present.

(7) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(8) A claimed horse may be tested for the presence of AAS if the claimant requests the test at the time the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the Senior State Steward. If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, as well as expenses incurred after the date of the claim and the costs of testing. If the test is negative, the claimant shall reimburse the regulatory body or the prior owner for the cost of the testing. While awaiting test results, a claimant:

(a) Shall exercise due care in maintaining and boarding a claimed horse; and

(b) Shall not materially alter a claimed horse.

(9) A postrace urine or blood sample collected from an intact male horse shall be identified to the state veterinarian and the testing laboratory.

(10) Only a licensed veterinarian may possess or administer a Therapeutic AAS.

(11) Qualified ninety (90) day grace period:

(a) The ban on use of AAS set forth in this Section shall begin immediately upon the effective date of this emergency administrative regulation. Penalties for a positive finding of AAS from a sample taken during a period of ninety (90) days following the effective date of this emergency regulation shall not be imposed, except as

follows:

1. A positive test for AAS from a sample taken during the final thirty (30) days of the ninety (90) day period shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation;

2. A positive finding of AAS in a postrace sample taken during the final thirty (30) days of the ninety (90) day period, accompanied by evidence of administration within the preceding sixty (60) days, shall constitute a violation of this administrative regulation;

(b) During the ninety (90) day period, a positive test for AAS, or a suspected violation of any provision of this section, shall be subject to investigation by the commission;

(c) The trainer and owner shall be notified if there is a positive test for AAS during the last sixty (60) days of the ninety (90) day period.

Section 10. Test Barn. (1) During a licensed meet, a licensed association shall provide and maintain on association grounds a test barn.

(2) The test barn shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for prerace or postrace testing.

(3) The test barn shall be under the supervision and control of the commission [~~Authority~~] veterinarian.

Section 11 [~~10.~~] Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the commission [~~Authority~~] veterinarian. The commission [~~Authority~~] veterinarian shall take a sample from a horse that finished first in a race and a horse or horses designated by the stewards to determine if there has been a violation of this administrative regulation.

(2) The commission [~~Authority~~] veterinarian shall determine a minimum sample requirement for the commission [~~Authority~~] laboratory which shall be uniform for each horse.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the commission [~~Authority~~] laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the commission [~~Authority~~] laboratory shall be secured as the split sample.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission [~~Authority~~] veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission [~~Authority~~] veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer, and

2. Administered only with the permission and in the presence of the commission [~~Authority~~] veterinarian.

(d) A licensed veterinarian may attend to a horse in the test barn, but only with the permission and in the presence of the commission [~~Authority~~] veterinarian.

(6) Within five (5) business days of receipt of notification by the commission [~~Authority~~] laboratory of a positive finding, the commission [~~Authority~~] shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards shall schedule a hearing within fourteen (14) calendar days of notification by the commission [~~Authority~~] to the owner and trainer. The hearing may be continued if the stewards determine a continuation is necessary to effectively resolve the issue.

Section 12 [~~11.~~] Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the samples for shipment to the commission [~~Authority~~] laboratory, addressed in Section 10 of this administrative regulation, until the split samples are packed and secured for shipment to the commission [~~Authority~~] laboratory. Split samples shall then be transferred to a freezer at a secure location approved and chosen by the commission [~~Authority~~].

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by paragraph (c) of this subsection

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission [~~Authority~~] veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the time the freezer was closed, and verification that the lock was secured prior to and after opening of the freezer. An commission [~~Authority~~] veterinarian or his or her designee shall be present when the freezer is opened.

(e) Evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log

(f) The commission [~~Authority~~] shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the specimen tested by the commission [~~Authority~~] laboratory be sent to split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission [~~Authority~~] to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards within three (3) business days after the trainer and owner of the horse receives oral or written notice of the positive findings of the commission [~~Authority~~] laboratory

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of such testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission [~~Authority~~] veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission [~~Authority~~] shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to both the person requesting the testing and the commission [~~Authority~~]; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission [~~Authority~~] shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission [~~Authority~~].

Section 13 [~~12.~~] Split Sample Chain of Custody. (1) Prior to opening the split sample freezer, the commission [~~Authority~~] shall provide a split sample chain of custody verification form. The form to be used shall be the "Split Sample Chain of Custody Form". The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer by an commission [~~Authority~~] employee after notice to the owner, trainer, or designee thereof and an commission[~~Authority~~]-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission [~~Authority~~]. A form shall be signed by both the owner's representative, if present, and the commission [~~Authority~~] representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The split sample chain of custody verification form shall be completed and signed by the representative of the commission [~~Authority~~] and the owner, trainer, or designee, if present.

(5) The commission [~~Authority~~] representative shall retain the original split sample chain of custody verification form and provide a copy for the owner, trainer, or designee, if requested.

Section 14.[~~13~~] Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly-licensed veterinarian.

(3) Medications shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15.[~~14~~] **Trainer Responsibility.** (1) A trainer shall be responsible for the condition of horses in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance or metabolic derivative, including permitted medication in excess of the maximum-allowable concentration, in horses in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission [~~Authority~~] to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission [~~Authority~~] veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring that this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the names of mares that have been bred and are entered to race;

(g) Promptly notifying the commission [~~Authority~~] veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission [~~Authority~~] to the stewards and the commission [~~Authority~~] veterinarian and ensuring compliance with Section 22 [~~21~~] of this administrative regulation governing postmortem examinations;

(i) Maintaining a medication record and medication status of horses in his or her care;

(j) Promptly notifying the stewards and the commission [~~Authority~~] veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed by 810 KAR 1.024, Section 4(1)(d) and (l) and 4(2),

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at least twenty (20) minutes before post time or at a time otherwise prescribed before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling of a horse in his or her care, unless an assistant trainer fulfills such duties or the trainer is excused by the stewards pursuant to 810 KAR 1:008, Section 3(6); and

(p) Attending the collection of a saliva, urine, blood, or other sample or specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16.[~~15~~] Licensed Veterinarians. (1) A veterinarian licensed by the commission [~~Authority~~] and practicing at a location under the jurisdiction of the commission [~~Authority~~] shall at all times be considered under the supervision of the commission [~~Authority~~] veterinarian and the stewards. A veterinarian shall report to the stewards or the commission [~~Authority~~] veterinarian a violation of this administrative regulation by a licensee.

Section 17.[~~16~~] Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission [~~Authority~~] shall submit a KHRA -2 form, "Veterinarian Report of Horses Treated to be Submitted Daily," to the commission [~~Authority~~] veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission [~~Authority~~] veterinarian.

(2) The KHRA-2 form shall be signed by the treating practicing veterinarian.

(3) The KHRA-2 form shall be on file not later than the time prescribed on the next race day by the commission [~~Authority~~] veterinarian.

(4) The KHRA-2 form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards or the commission [~~Authority~~], or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a KHRA-2 form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission [~~Authority~~] laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 1:028.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 20 [~~19~~] of this administrative regulation shall report this fact immediately to the commission [~~Authority~~] veterinarian or to the stewards.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. Such records

shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission [~~Authority~~] personnel.

Section 18.[~~17.~~] Veterinarian's List. (1) The commission [~~Authority~~] veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission [~~Authority~~] veterinarian, the horse is capable of competing in a race.

(3) The commission [~~Authority~~] veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission [~~Authority~~] veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a three hundred sixty-five (365) day period - thirty (30) days;

(c) Third incident within a three hundred sixty-five (365) day period - one hundred eighty (180) days;

(d) Fourth incident within a three hundred sixty-five (365) day period - barred from racing for life

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse shall be removed from the bleeder list only upon the direction of the commission [~~Authority~~] veterinarian, who shall certify in writing to the stewards the recommendation for removal.

(8) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission [~~Authority~~] veterinarian.

Section 19.[~~18.~~] Distribution of Purses, Barn Searches, and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the commission [~~Authority~~] laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance, or metabolic derivative in the saliva, urine, blood, body fluids, or other sample or specimen taken from a horse.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission [~~Authority~~] laboratory issues a positive finding, the Executive Director of the commission [~~Authority~~] or the stewards shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the commission [~~Authority~~] detailing the findings of the investigation.

(5) If the purse money has been distributed, the stewards shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission [~~Authority~~] laboratory and split sample laboratory, the remaining portion of the samples at the commission [~~Authority~~] laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission [~~Authority~~]. If a report indicating a positive finding has been issued, the commission [~~Authority~~] shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission [~~Authority~~] may freeze samples.

Section 20.[~~19.~~] Other Prohibited Practices. In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited:

(1) The possession or use of a drug, medication, or substance by a licensee, or his designee or agent, to a horse within a nonpublic area at a location under the jurisdiction of the commission [~~Authority~~]:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider.

(2) Without the prior permission of the commission [~~Authority~~] or its designee, the possession or use of a drug, medication, or substance that has never been approved by the U.S. Food and Drug Administration (USFDA) for use in humans or animals at a location under the jurisdiction of the commission [~~Authority~~]. The commission [~~Authority~~] shall determine whether to grant prior permission after consultation with the Equine Research Drug Council.

(3) The possession or use of the following blood-doping agents at a location under the jurisdiction of the commission [~~Authority~~]:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin;

(d) Hemopure; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) The practice, administration, or application of a treatment, procedure, or therapy which may:

(a) Endanger the health or welfare of a horse, or

(b) Endanger the safety of a rider.

(5) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission [~~Authority~~] shall administer the treatment,

(c) The commission [~~Authority~~] veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission [~~Authority~~] veterinarian on the prescribed form within twenty-four (24) hours of treatment. The form to be used is the "Kentucky Horse Racing Authority Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy".

(6) The administration of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse within twenty-four (24) hours prior to post time for the race in which the horse is entered.

(7) Without the prior permission of the commission [~~Authority~~] veterinarian or his or her designee, based on standard veterinary practice for recognized conditions, the use of a nasogastric tube which is longer than six (6) inches for the administration of any substance within twenty-four (24) hours prior to the post time of a race in which the horse is entered.

(8) A serum total carbon dioxide (TCO_2) level that exceeds 37.0 millimoles per liter in a horse; except no violation shall exist if the TCO_2 level is found to be normal for the horse following the quarantine procedure set forth in Section 20 of this administrative regulation.

(9) Possession or use of a blood gas machine by a person other than an authorized representative of the commission [~~Authority~~] at a location under the jurisdiction of the commission [~~Authority~~]; and

(10) Possession or use of a shock wave therapy machine or radial pulse wave therapy machine by anyone other than a veterinarian licensed by the commission [~~Authority~~] at a location under the jurisdiction of the commission [~~Authority~~].

Section 21.[~~20.~~] TCO_2 Testing and Procedures. (1)(a) The stewards or commission [~~Authority~~] veterinarian may order the

prerace or post-race collection of blood samples from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as selected by the stewards, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Prerace testing shall be done at the reasonable time, place, and manner directed by the commission [~~Authority~~] veterinarian.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO_2 concentration in the serum or plasma of the horse. If the commission [~~Authority~~] laboratory determines that the TCO_2 level exceeds thirty-seven (37) millimoles per liter, the Executive Director of the commission [~~Authority~~] shall be informed of the positive finding.

(d) Split Sample testing for TCO_2 may be requested by an owner or trainer in advance of the collection of the samples by the commission [~~Authority~~] veterinarian; however, the collection and testing of a split sample for TCO_2 testing shall be done at a reasonable time, place, and manner directed by the commission [~~Authority~~] veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO_2 is determined to exceed thirty-seven (37) millimoles per liter and the licensed owner or trainer of the horse certifies in writing to the stewards within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the stewards, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission [~~Authority~~] veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by an commission [~~Authority~~] representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission [~~Authority~~] veterinarian is satisfied that the horse's level of TCO_2, as registered in the original test, is physiologically normal for that horse, the stewards shall permit the horse to race. In such case, the stewards may require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO_2 level is physiologically normal.

Section 22.[~~21.~~] Postmortem Examination. (1) The commission [~~Authority~~] veterinarian may require a postmortem examination by a qualified designee of the commission [~~Authority~~] of a horse that dies or is destroyed at a location under the jurisdiction of the commission [~~Authority~~].

(2) The commission [~~Authority~~] or its designee shall coordinate with the trainer or owner to determine and address any insurance requirements.

(3) The commission [~~Authority~~] veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The commission [~~Authority~~] veterinarian may submit saliva, blood, urine, and other samples and specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The commission [~~Authority~~] shall bear the cost of an autopsy that is required by the commission [~~Authority~~].

(4) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 23 [~~22~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinarian Report of Horses Treated to be Submitted Daily, KHRA- 2", 8/97,

(b) "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08[~~(11/05)~~];

(c) "Kentucky Horse Racing Authority Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", 12/05; [~~and~~]

(d) "Split Sample Chain of Custody Form", 12/05; and

(e) "Therapeutic AAS Administration Form", 9/08

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission [~~Authority~~], 4063 Ironworks Parkway, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT BECK, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 28, 2008, at 11 a.m. at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, October 21st, 2008, five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday, October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the use of medications in horses on race days at pari-mutuel thoroughbred horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all horses engaged in pari-mutuel horse racing in the Commonwealth of Kentucky, as regulated by the Kentucky Horse Racing Commission pursuant to KRS Chapter 230, compete on a level playing field, and that no horse enjoys an unfair advantage due to the use of performance-enhancing drugs or other prohibited medications.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.240(2) states in part as follows: "The authority shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." This regulation furthers the statutory goal above by setting forth the rules and prohibitions relating to the use of race day medications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative will clarify exactly which race day medications can be taken and in what amounts. It also establishes the procedures to be used for taking blood and urine samples from race horses, and the procedures to be used in testing the samples for prohibited drugs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. The amendment to this administrative regulation creates an extensive new section banning the use of anabolic steroids, and setting forth the terms of a grace period during which

penalties for the detection of anabolic steroids will be abated or mitigated somewhat.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ban the use of anabolic steroids, in order to ensure that horses racing in the Commonwealth of Kentucky compete on an equal basis with one another, without the use of anabolic steroids.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adding anabolic steroids to the prohibitions against improper drug use set forth 810 KAR 1:018. KRS 230.240(2) specifically grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the use of drugs in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by adding a more detailed provision concerning steroids to the comprehensive provisions regulating drug use already contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission currently licenses as thoroughbred racing participants 4,905 owners, 364 trainers and assistant trainers, and 100 veterinarians. These are the individuals who will be primarily affected by the regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment· Owners, trainers, and veterinarians will be required to comply with the ban on the use of anabolic steroids in horse racing.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No cost.

(b) On a continuing basis. No cost.

What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Horse Racing Commission already

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No significant increase in fees or funding will be required to implement the change. It is possible the Commission may in future hire an additional test barn worker to aid in sample collection in certain situations.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by the amendment to this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment; the ban on steroids applies to all participants in racing on an even basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2 What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, as the agency promulgating this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.240(2), which grants the commission the authority to promulgate regulations concerning the use of medications in race horses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may the commission to hire an additional detention barn worker to collect blood and urine samples in some situations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Exact amount undetermined.

(d) How much will it cost to administer this program for subsequent years? Exact amount undetermined.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Enforcement
(Amendment)

810 KAR 1:028. Disciplinary measures and penalties.

RELATES TO: KRS 230.215(2), 230 260(1), (3), 230.265(2), 230.290(2), 230.300, 230 320(1), 230.361(1)

STATUTORY AUTHORITY: KRS 230 215(2), 230.240(2), 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) authorizes the Authority to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the disciplinary powers and duties of the stewards and the commission [~~Authority~~].

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that such other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked pursuant to this administrative regulation pertaining to:

(a) A violation involving Class A drugs;

(b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;

(c) A third or subsequent violation of 810 KAR 1:018 for an excessive TCO_2 level; or

(d) A third or subsequent violation of 810 KAR 1:018 involving shock wave, or blood gas machines.

(8) "Schedule" means the Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule.

(9) "Withdrawal guidelines" means "The Kentucky Horse Racing Authority Withdrawal Guidelines "

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR shall be adjudicated in accordance with 810 KAR

1:029 and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a prerace or postrace sample that is not classified in the schedule, the commission [~~Authority~~] may establish a classification after consultation with either or both of the Racing Commissioners International and the Racing and Medication Testing Consortium or their successor.

(3) Stewards and the commission [~~Authority~~] shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the commission [~~Authority~~] that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) The commission [~~Authority~~] has the authority to suspend or revoke the commission[~~Authority~~]-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked or a horse that has been suspended, shall be denied access to locations under the jurisdiction of the commission [~~Authority~~] during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in Kentucky racing days.

(7) A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the commission [~~Authority~~]. If an appeal is pending, that fact shall be so noted.

(8) To protect the racing public and ensure the integrity of racing in the commonwealth, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(9) A veterinarian who administers, or is a party to, or facilitates the administration of, or is found to be responsible for the administration of a Class A drug to a horse, in violation of 810 KAR 1:018, Section 19, or who has engaged in prohibited practices in violation of 810 KAR 1:018, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(11) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the commission [~~Authority~~] may charge the person with only one (1) offense, if the person demonstrates that he or she was not aware that overages were being administered, because the positive test results showing such overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the commission [~~Authority~~].

Section 3. Prior Offenses. (1) Prior offenses occurring in Kentucky shall be considered, in accordance with the requirements of this section, by the stewards and by the commission [~~Authority~~] in assessing penalties. Prior offenses occurring in other racing jurisdictions may be considered by the stewards and the commission [~~Authority~~] in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.

(2) Prior offenses occurring before September 7, 2005 shall not be considered.

(3) Prior offenses involving a Class C drug or Class D drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005 and within one (1) year of the offense for which the person stands charged.

(4) Prior offenses involving a Class A drug or Class B drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005.

(5) Prior offenses shall not be considered for purposes of enhancing a penalty if the drug, medication, or substance that was the subject of the prior offense was of a lower class, pursuant to the schedule, than the drug, medication, or substance that is the subject of the offense for which the person stands charged.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations.

(1) Class A drug. A licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to three (3) years as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $5,000 to $10,000; or

b. Forfeiture of purse money won.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) years to five (5) years as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $10,000 to $20,000; or

b. Forfeiture of purse money won.

(c) For a third offense:

1. A suspension or revocation of licensing privileges for not less than five (5) years as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. A revocation of licensing privileges may be permanent. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $20,000 to $50,000; or

b. Forfeiture of purse money won.

(d) Suspension of owner's horse A horse administered a Class A drug in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense, a suspension from zero to sixty (60) days;

2. For a second offense, a suspension from sixty (60) to 180 days; or

3. For a third offense, a suspension from 180 to 240 days.

(2) Class B drug. A licensee who administers, or is a party to or responsible for administering a Class B drug to a horse, in violation of 810 KAR 1.018 or more than one (1) NSAID to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to sixty (60) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $500 to $1,000; or

b. Forfeiture of purse money won.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from one (1) month to six (6) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked for six (6) months.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $1,000 to $2,500; or

b. Forfeiture of purse money won.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from two (2) months to one (1) year as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked for six (6) months or longer.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a Payment of a fine of $2,500 to $5,000; or

b. Forfeiture of purse money won.

(d) Suspension of owner's horse. A horse administered a Class B drug, in violation of 810 KAR 1:018, or more than one (1) NSAID, in violation of 810 KAR 1:018, shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense, no suspension;

2. For a second offense, a suspension from zero to sixty (60) days; or

3. For a third offense, a suspension from sixty (60) to 180 days.

(3) Class C drug or overage of one (1) permitted NSAID.

(a)The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection:

1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 810 KAR 1:018; and

2. A licensee who is responsible for an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018.

a. Phenylbutazone (>10 mcg/ml);

b. Flunixin (>100 ng/ml); or

c. Ketoprofen (>50 ng/ml).

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero to ten (10) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $250 to $500; or

b. Forfeiture of purse money won.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $500 to $1,000; or

b. Forfeiture of purse money won.

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $1,000 to $2,500; or

b. Forfeiture of purse money won.

(4) Certain overages of Permitted NSAIDs and Furosemide Violations.

(a) The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection:

1. Notwithstanding Section 4(3) of this administrative regulation, a licensee who administers, or is a party to or responsible for administering an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018·

a. Phenylbutazone (5.1-9.9 mcg/ml),

b. Flunixin (21-99ng/ml); or

c. Ketoprofen (11-49 ng/ml);

2. A licensee who administers, or is party to or responsible for administering an overage of Furosemide in an amount in excess of 100 ng/ml; and

3. A licensee who has not administered furosemide when the horse has been identified as a horse on furosemide.

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero to five (5) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $250 to $500.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from zero days to ten (10) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $500 to $1,000;

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from zero days to fifteen (15) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of $1,000 to $2,500; or

b. Forfeiture of purse money won.

(5) Class D Drug.

(a) The penalty for a first violation involving a Class "D" drug shall be a written warning to the trainer and owner.

(b) For multiple violations involving a Class "D" drug the licensee may be subject to a suspension of licensing privileges from zero days to five (5) days as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(c) The licensee whose licensing privileges may be suspended, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension by agreeing to payment of a fine of no more than $250.

Section 5. TCO2 penalties. A person who violates or causes the violation of Section 19 (6), (7) or (8) of 810 KAR 1:018 shall be subject to the following penalties:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an

agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of $1,000 to $1,500; or

2. Forfeiture of purse money won.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of $1,500 to $3,000; or

2. Forfeiture of purse money won.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of $3,000 to $5,000; or

2. Forfeiture of purse money won.

(4) For subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to forfeiture of purse money won.

(5) Suspension of owner's horse. A horse that registers a TCO2 level in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:

(a) For a first offense, no suspension;

(b) For a second offense, a suspension from fifteen (15) days to sixty (60) days;

(c) For a third offense, a suspension from sixty (60) days to 180 days; and

(d) For a fourth offense, a suspension from eight (8) months to one (1) year.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes the violation of Section 19 (5) (a), 19(5)(b), 19(9) or 19(10) of 810 KAR 1:018 shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from one (1) month to three (3) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $5,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) months to six (6) months as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~]may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $5,000 to $10,000.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from six (6) months to one (1) year as deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $10,000 to $20,000.

Section 7. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission [~~Authority~~];

(b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked, or

(c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission [~~Authority~~].

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for such expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 8. Other Disciplinary Measures. (1) A person who violates 810 KAR 1:018, Section 6, regarding furosemide and adjunct bleeder medication use on race day shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 810 KAR 1 018, Section 8(3) for administering more than one (1) permissible Non-Steroidal Anti-Inflammatory Drug (NSAID) shall be treated the same as a person who has committed a Class B drug violation.

(3) A person who violates 810 KAR 1:018, Section 19(2) shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission [~~Authority~~] after consultation with the Equine Research Drug Council.

(4) A person who violates 810 KAR 1.018, Section 19(3) shall be treated the same as a person who has committed a Class A drug violation.

Section 9. Disciplinary Measures by Stewards. (1) Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the

outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case; or

(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the stewards may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed $5,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 10. (1) Disciplinary measures by the commission [~~Authority~~]. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the commission [~~Authority~~] may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation; or

(c) Eject or exclude persons from association grounds for a length of time the commission [~~Authority~~] deems necessary.

(2) The licensee whose licensing privileges may be suspended or revoked and the commission [~~Authority~~] may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed $50,000 as may be deemed appropriate by the commission [~~Authority~~] in keeping with the seriousness of the violation and the facts of the case.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 9/08[~~11/05~~]; and

(b) "The Kentucky Horse Racing Authority Withdrawal Guidelines", 09/08[~~2/06 is hereby incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission [~~Authority~~], 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

[~~Section 12. The requirements, implementation, and enforcement of this emergency administrative regulation shall begin on September 7, 2005.~~]

ROBERT BECK, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 28, 2008, at 11 a.m. at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, October 21st, 2008, five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday, October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth penalties for the prohibited use of medications in horses on race days at pari-mutuel horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all horses engaged in pari-mutuel horse racing in the Commonwealth of Kentucky, as regulated by the Kentucky Horse Racing Commission pursuant to KRS Chapter 230, compete on a level playing field, and that no horse enjoys an unfair advantage due to the use of performance-enhancing drugs or other prohibited medications.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.240(2) states in part as follows: "The authority shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." This regulation furthers the statutory goal above by setting forth the rules and prohibitions relating to the use of race day medications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulations provides the penalty structure for the prohibited use of race day medications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment amends the "Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule" to place anabolic steroids in the "B" penalty range, rather than the "C" range as previously classified. This amendment alters the "Kentucky Horse Racing Authority Withdrawal Guidelines" to increase the withdrawal period for anabolic steroids from 72 hours to 60 days.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more effectively ban the use of anabolic steroids in racing, by increasing the penalty range and the withdrawal period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adjusting the penalty range and withdrawal times for the use of anabolic steroids in horse racing. KRS 230 240(2) specifically grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the use of drugs in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by prescribing appropriate penalty ranges and withdrawal guidelines concerning the use of anabolic steroids.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission currently licenses as thoroughbred racing participants 4905 owners, 364 trainers and assistant trainers, and 100 veterinarians. These are the individuals who will be primarily affected by the regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Owners, trainers, and veterinarians will be required to comply with the ban on the use of anabolic steroids in horse racing.

(5)Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No cost.

(b) On a continuing basis. No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Horse Racing Commission already has sufficient funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by the amendment to this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment; the ban on steroids applies to all participants in racing on an even basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: John L. Forgy

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, as the agency promulgating this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.240(2), which grants the commission the authority to promulgate regulations concerning the use of medications in race horses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may require an additional detention barn worker to collect blood and urine samples in some situations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Exact amount undetermined.

(d) How much will it cost to administer this program for subsequent years? Exact amount undetermined

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Enforcement
(Amendment)

811 KAR 1:090. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 230.240(2), 230.260(1), 230.265(2), 230.290(2), (3), 230.310, 230.320(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3), (6), 230.320(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(3), and 230.320 authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibility relating to the health and fitness of horses.

Section 1. Definitions. (1) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(2) "Authority laboratory" means a laboratory chosen by the commission to test saliva, urine, blood, or other samples or specimens from a horse taken under the supervision of the commission veterinarian.

(3) "Location under the jurisdiction of the commission" or "Association grounds" means a track as defined in KRS 230.210(9).

(4) "Permitted NSAIDs" means the following Permitted Nonsteroidal Anti-Inflammatory Drugs: Phenylbutazone and flunixin, if administered in compliance with Section 8 of this administrative regulation.

(5) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, was present in the sample.

(a) For the drugs, medications or substances listed in Section 2(3), 6, or 8 of this administrative regulation, a positive finding means a finding in excess of the established concentration level prescribed in those sections.

(b) Positive findings also include:

1. Substances present in the horse in excess of concentrations at which the substances might occur naturally; and

2. Substances foreign to a horse at concentrations that cause interference with testing procedures.

(6) "Split sample" means the split sample portion of the saliva, urine, blood, or other sample or specimen taken under the supervision of the commission veterinarian.

(7) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the saliva, urine, blood, or other samples or specimens taken from a horse under the supervision of the commission veterinarian.

(8) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining sample specimens for prerace and postrace testing.

Section 2. Use of Medication. (1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as specifically permitted in this administrative regulation, while participating in a race (betting or nonbetting), qualifying race, time trial, or official workout, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is a narcotic;

(b) Could serve as an anesthetic or tranquilizer;

(c) Could stimulate, depress or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or

(d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

(3) Therapeutic medications in excess of established threshold concentrations set forth in this administrative regulation shall be prohibited. The threshold for furosemide is set forth in Section 6 of this administrative regulation. The thresholds for phenylbutazone and flunixin are set forth in Section 8 of this administrative regulation.

(4) A substance present in a horse in excess of a concentration at which the substance could occur naturally shall be prohibited. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or nonbetting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolic derivative thereof, prohibited by this section, if:

(a) A saliva, urine, blood, or other sample or specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or nonbetting), qualifying race, time trial, or official workout; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the "Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule (09/08)[~~(11/05)~~]" for classification of drugs and medications violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 811 KAR 1:095.

Section 3. Treatment Restrictions. (1) Except as set forth in Section 4 of this administrative regulation, or the oral administration of phenylbutazone as set forth in Section 8 of this administrative regulation, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall not administer a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectables allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide and the one (1) adjunct bleeder medication set forth in Section 6 of this administrative regulation.

(3) Except as set forth in subsection (5) of this section, a person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall not possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission shall use only single-use disposable needles, and shall dispose of them in a container provided by the commission.

(5) If a person regulated by the commission, has a medical condition which makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The judges may grant approval for a person to possess and use a needle and syringes at a location under the jurisdiction of the commission, but may establish necessary restrictions and limitations.

(6) An commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission.

Section 5. Anti-Ulcer Medications. The following anti-ulcer medications shall be permitted to be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to the race in which the horse is entered:

(1) Cimetidine (Tagamet®): 8-20 mg/kg,

(2) Omeprazole (Gastrogard®): 2.2 grams;

(3) Ranitidine (Zantac®). 8 mg/kg; and

(4) Sulcrafate: 2-4 grams.

Section 6. Furosemide and Adjunct Bleeder Medication Use on Raceday. (1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race (betting or nonbetting), qualifying race, time trial, or official workout.

(2) Only the commission veterinarian or a licensed veterinarian approved by the commission may administer furosemide prior to a race (betting or nonbetting), qualifying race, time trial, or official workout. If the furosemide is administered by a licensed veterinarian other than the commission veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian.

(3) The use of furosemide shall be permitted under the following circumstances:

(a) Furosemide shall be administered on the grounds of a location under the jurisdiction of the commission, by a single intravenous injection, not less than four (4) hours prior to post time for the race in which the horse is entered.

(b)The syringe employed in the injection shall be provided immediately to the commission veterinarian, judge or commission employee, if requested, to determine if there has been a violation of this administrative regulation.

(c) The furosemide dosage administered shall not be less than 100 mg and shall not exceed 250 mg.

(d) The specific gravity of postrace urine samples shall not be below 1.010. If the specific gravity of the postrace urine sample is determined to be below 1.010, a quantification of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(e) A horse eligible to receive furosemide and entered to race, pursuant to Section 7 of this administrative regulation, that does not show a detectable concentration of the drug in the postrace urine, plasma, or serum shall be in violation of this administrative regulation.

(f) The cost of administering furosemide shall be determined by the commission based on prevailing costs of veterinary services and supplies and shall be prominently posted in the racing office.

(g) The cost of administering furosemide shall be borne by the trainer.

(4) One of the following adjunct bleeder medications may be administered to a horse not less than four (4) hours prior to post time for the race in which the horse is entered:

(a) Aminocaproic acid:

(b) Carbazochrome:

(c) Conjugated estrogens, or

(d) Tranexamic acid.

Section 7. Furosemide Eligibility. (1)(a) A horse shall be eligible to qualify with furosemide if the commission veterinarian or a licensed veterinarian approved by the commission determines that it would be in the horse's best interest to race with furosemide.

(b) A horse eligible for furosemide and entered to start may be monitored by an commission-approved representative during the four (4) hour period prior to post time of the race in which the horse is entered.

(2)(a) A horse determined to be a bleeder by the commission veterinarian or a licensed veterinarian approved by the commission shall not be eligible to qualify for five (5) days after determination for eligibility to receive furosemide has been made.

(b) A horse that has been placed on the furosemide list shall perform in a qualifying race with furosemide and meet the standards of the meeting before being eligible to race.

(c) A horse eligible for furosemide shall receive furosemide unless the licensed veterinarian submits a written request to the commission veterinarian to no longer administer furosemide to the horse. The request shall be on the form "Certificate of Termination of Lasix KHRA 100-5 (8/06)" and shall be submitted to the commission veterinarian.

(d) A horse that has been determined eligible to receive furosemide shall not have the administration of furosemide terminated in a pari-mutuel race until the horse has performed in a qualifying race without the use of furosemide.

(3)(a) After a horse has been determined by the commission veterinarian to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide for a period of

sixty (60) calendar days unless it is determined by the commission veterinarian that it is detrimental to the welfare of the horse to not be on furosemide. The commission veterinarian shall complete the form "Declaration to Remove a Horse from the administration of Furosemide KHRA 100-1 (8/06)" if the commission veterinarian determines that the horse is no longer required to receive furosemide.

(b) If a horse is determined by the commission veterinarian to be ineligible to receive furosemide a second time in a three hundred sixty-five day period, the horse shall not be eligible to receive furosemide for a period of ninety (90) calendar days.

(4) A horse that has been placed on a furosemide or bleeder list in another jurisdiction may be eligible to receive furosemide in this jurisdiction.

Section 8. Permitted Non-steroidal Anti-Inflammatory Drugs (NSAIDs) (1) The use of one (1) of the NSAIDs listed in this section shall be permitted not less than twenty-four (24) hours prior to post time for the race for which the horse is entered provided the concentration in the horse's sample or specimen does not exceed the levels set forth in this section when tested post race.

(2) Phenylbutazone.

(a) A single oral or intravenous administration of phenylbutazone shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The phenylbutazone dosage administered shall not exceed:

1. Two (2) grams (g) oral; or

2. Two (2) grams (g) intravenous.

(c) A post race sample of phenylbutazone reported to exceed a level of five (5) micrograms per milliliter of blood plasma shall be considered a violation of this section.

(d) The oral administration of phenylbutazone may be performed by the trainer.

(3) Flunixin.

(a) A single intravenous administration of flunixin shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The flunixin dosage administered shall not exceed 500 mg.

(c) A post race sample of flunixin reported to exceed a level of twenty (20) nanograms per milliliter of blood plasma shall be considered a violation of this section.

(4) Ketoprofen.

(a) A single intravenous administration of ketoprofen shall be permitted not less than twenty-four (24) hours prior to post time of the race for which the horse is entered.

(b) The ketoprofen dosage administered shall not exceed one (1) gram.

(c) A post race sample of ketoprofen reported to exceed a level of ten (10) nanograms per milliliter of blood plasma shall be considered a violation of this section.

(5) Phenylbutazone, flunixin or ketoprofen, injected intravenously, shall be administered by a licensed veterinarian approved by the commission. If there is no licensed veterinarian reasonably available, the commission veterinarian may administer the injection with the prior approval of the Chief Judge.

(6) Nonsteroidal anti-inflammatory drugs other than phenylbutazone, flunixin, or ketoprofen shall be prohibited.

(7) A horse that has been administered phenylbutazone, flunixin, or ketoprofen shall be subject to a saliva, urine, blood, or other sample or specimen taken under the supervision of the commission veterinarian to determine the quantitative phenylbutazone, flunixin, or ketoprofen level present in the horse or the presence of other drugs in the horse.

(8) In a horse in which phenylbutazone has been administered according to subsection (2) of this section, flunixin and ketoprofen are prohibited. In a horse in which flunixin has been administered according to subsection (3) of this section, phenylbutazone and ketoprofen are prohibited. In a horse in which ketoprofen has been administered according to subsection (4) of this section, phenylbutazone and flunixin are prohibited.

(9) A finding of phenylbutazone below a concentration of one (1) microgram per milliliter of plasma or serum shall not constitute a violation of subsection (8) of this section.

Section 9. Anabolic Steroids (1) The presence of exogenous anabolic androgenic steroids ("AAS") is banned in a horse that is racing. The detection of any exogenous anabolic steroid or metabolite thereof in a postrace biologic sample or a prerace biologic sample after the horse has been entered shall constitute a violation.

(2) The detection in a postrace sample of any endogenous anabolic steroid or metabolite thereof where the concentration of the AAS, its metabolites, markers and/or any relevant ratio(s) as have been published in peer-reviewed scientific literature deviates from naturally occurring physiological levels shall constitute a violation. For purposes of this administrative regulation, the following are deemed to be the naturally occurring physiological levels:

(a) Boldenone (free and conjugated) in male horses other than geldings - 15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses.

(b) Nandrolone (free and conjugated):

1. In geldings - 1 ng/ml in urine;

2. In fillies and mares - 1 ng/ml in urine;

3. In male horses other than geldings - 45 ng/ml of metabolite, 5Σ-estrane-3β, 17 Σ-diol in urine or a ratio in urine of 5Σ-estrane-3β, 17 Σ-diol to 5Σ-estrene-3β, 17 Σ-diol of >1:1.

(c) Testosterone (free and conjugated):

1. In geldings - 20 ng/ml in urine;

2. In fillies and mares - 55 ng/ml urine;

3. Male horses: in amounts in excess of amounts existing naturally in the untreated horse at normal physiological concentrations.

(3) A horse may receive one of the following medications: boldenone, nandrolone, or testosterone ("Therapeutic AAS") if each of the following conditions are met:

(a) The Therapeutic AAS must be given for the sole purpose of treating an existing illness or injury having been diagnosed by the regular attending veterinarian. Any owner or trainer who is uncertain about whether a particular purpose is considered to be therapeutic shall consult with the commission prior to administration;

(b) The horse shall be ineligible to race in Kentucky until all of the following have occurred:

1. A minimum of sixty (60) days has passed since the administration of the therapeutic AAS to the horse;

2. A relevant biological sample is taken from the horse;

3. The sample is tested for anabolic steroids by a laboratory from the approved list established by the commission at the expense of the owner of the horse; and

4. The KHRC has received a report from the laboratory of a negative finding regarding the sample;

(c) A report from the commission laboratory of a negative finding in a prerace sample does not provide a safe harbor for the owner, trainer, veterinarian or horse. A report from the commission laboratory of a positive finding in a postrace sample will be treated as a violation even if there was a negative finding by the commission laboratory in a prrace sample;

(d) The horse may not be entered to race until at least sixty (60) days after the administration of the Therapeutic AAS to the horse;

(e) Procedures for administration of Therapeutic AAS.

1. Only a licensed veterinarian may administer a Therapeutic AAS.

2. Other treatment methods shall be investigated prior to consideration of the use of Therapeutic AAS and the medical records shall include documentation of the consideration of the alternative methods. The medical records for the horse shall include information documenting the necessity for the administration of the Therapeutic AAS.

3. The administering veterinarian shall record on the Therapeutic AAS Administration Form the following information:

a. The Therapeutic AAS administered, the amount in milligrams, route, and site of administration;

b. The date and time of administration;

c. The name, age, sex, color, and registration certificate number of the horse to which the Therapeutic AAS is administered;

d. The diagnosis and justification for administration of the Therapeutic AAS to the horse.

4. The Therapeutic AAS Administration Form shall be signed by the veterinarian administering the medication.

5. The Therapeutic AAS Administration Form shall be delivered electronically to the Equine Medical Director of the Kentucky Horse Racing Commission within seventy-two (72) hours after administration. If the Therapeutic AAS Administrative Form cannot be delivered electronically, the practitioner shall file the form with the Medical Director in person or through the mail. It is the responsibility of the submitting veterinarian to confirm receipt by the Equine Medical Director.

(4) If a horse is shipped into Kentucky from outside the state, prior to being eligible to race in Kentucky:

(a) The protocol in subsection (3) of this section shall be complied with in its entirety; or

(b)1. The trainer shall certify that he or she has had control of the horse for the sixty (60) days previous to racing and the horse has not been administered anabolic steroids; or

2. The trainer shall certify that he or she has not had control of the horse for the sixty (60) days previous to racing but shall acknowledge that he or she is responsible and accountable should a postrace test identify a violation of this administrative regulation.

(5) Substances referred to in subsections (1) and (2) of this section are "Class B" drugs. A positive test for exogenous anabolic steroids or for amounts in excess of the concentrations referred to in subsection (2) of this section are subject to the penalties referred to in 810 KAR 1:028.

(6) The detection of more than one Therapeutic AAS or metabolite thereof in any sample in excess of the threshold level set forth in subsection (2) of this section shall constitute a violation for each anabolic steroid detected in excess of the one Therapeutic AAS. There shall also be a violation if more than one Therapeutic AAS is present.

(7) The trainer and veterinarian for the horse shall be charged accordingly and shall be subject to penalties for a violation of this administrative regulation.

(8) A claimed horse may be tested for the presence of AAS if the claimant requests the test at the time the claim form is completed and deposited in the association's claim box. The claimant shall bear the costs of the test. The results of the test shall be reported to the Senior State Steward. If a test is positive, the claim may be voided at the option of the claimant and the claimant shall be entitled to return of all sums paid for the claimed horse, as well as expenses incurred after the date of the claim and the costs of testing. If the test is negative, the claimant shall reimburse the regulatory body or the prior owner for the cost of the testing. While awaiting test results, a claimant:

(a) Shall exercise due care in maintaining and boarding a claimed horse; and

(b) Shall not materially alter a claimed horse.

(9) A postrace urine or blood sample collected from an intact male horse shall be identified to the state veterinarian and the testing laboratory.

(10) Only a licensed veterinarian may possess or administer a Therapeutic AAS.

(11) Qualified ninety (90) day grace period.

(a) The ban on use of AAS set forth in this section shall begin immediately upon the effective date of this administrative regulation. Penalties for a positive finding of AAS from a sample taken during a period of ninety (90) days following the effective date of this administrative regulation shall not be imposed, except as follows:

1. A positive test for AAS from a sample taken during the final thirty (30) days of the ninety (90) day period shall be considered an aggravating factor in any subsequent case involving a violation of this administrative regulation.

2. A positive finding of AAS in a postrace sample taken during the final thirty (30) days of the ninety (90) day period, accompanied by evidence of administration within the preceding sixty (60) days, shall constitute a violation of this administrative regulation.

(b) During the ninety (90) day period, a positive test for AAS, or a suspected violation of any provision of this section, shall be subject to investigation by the commission.

(c) The trainer and owner shall be notified if there is a positive test for AAS during the last sixty (60) days of the ninety (90) day period.

Section 10. Test Area. (1) A licensed association shall provide and maintain on association grounds a test area.

(2) The test area shall be a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for prerace and postrace testing.

(3) The test area shall be under the supervision and control of the commission veterinarian.

Section 11.[~~10.~~] Sample Collection, Testing and Reporting. (1) Sample collection shall be done in accordance with the instructions provided by the commission veterinarian. The commission veterinarian shall take a sample from a horse that finishes first in a race and a horse or horses designated by the judges to determine if there has been a violation of this administrative regulation.

(2) The commission veterinarian shall determine a minimum sample requirement for the commission laboratory which shall be uniform for each horse.

(a) If the specimen obtained from a horse is less than the minimum sample requirement, the entire specimen shall be sent to the commission laboratory.

(b) If a specimen obtained is greater than the minimum sample requirement but less than twice that amount, the portion of the sample that is greater than the minimum sample requirement shall be secured as the split sample.

(c) If a specimen obtained is greater than twice the minimum sample requirement, a portion of the sample approximately equal to the amount provided for the commission laboratory shall be secured as the split sample.

(3) An owner or trainer may request that a split sample be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the split sample laboratory.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer, and

2. Administered only with the permission and in the presence of the commission veterinarian.

(d) A licensed veterinarian may attend to a horse in the test barn, but only with the permission of, and in the presence of, the commission veterinarian.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the commission shall notify the owner and trainer orally or in writing of the positive finding.

(7) The judges shall schedule a hearing within fourteen (14) calendar days of notification by the commission to the owner and trainer. The hearing may be continued if the judges determine that a continuance is necessary to effectively resolve the issue.

Section 12.[~~11.~~] Storage and Shipment of Split Samples. (1) Split samples shall be secured and made available for further testing in accordance with the following procedures:

(a) Split samples shall be secured in the test barn in the same manner as the samples addressed in Section 10 of this administrative regulation, until the split samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer at a secure location approved and chosen by the commission.

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer is opened to

specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, the time the freezer was closed and verification that the lock was secured prior to and after opening of the freezer. An commission veterinarian or his or her designee shall be present when the freezer is opened.

(e) Evidence of a malfunction of a split sample freezer or of samples that are not in a frozen condition during storage shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the specimen tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select from a list of laboratories approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding of the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining and shipping the split sample result shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to both the person requesting the testing and the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

(d) The commission shall maintain a list of laboratories approved for the testing of split samples and the list shall be on file at the offices of the commission.

Section 13.[~~12.~~] Split Sample Chain of Custody. (1) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the "Split Sample Chain of Custody Form." The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer by an commission employee after notice to the owner, trainer or their designee, and an commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy for the owner, trainer, or designee, if requested.

Section 14.[~~13.~~] Medical Labeling. (1) A licensee on association grounds shall not have within his or her possession, or within his or her personal control, a drug, medication, or other substance that is prohibited from being administered to a horse on a race day unless the product is properly and accurately labeled.

(2) A drug or medication which, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(3) A drug or medication shall bear a prescription label which is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 15.[~~14.~~] **Trainer Responsibility.** (1) A trainer shall be responsible for the condition of a horse in his or her care.

(2) A trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to a horse that is on association grounds;

(c) The proper identity, custody, care, health, condition and safety of a horse in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse, in his or her care, at a location under the jurisdiction of the commission to the judges and the commission veterinarian and ensuring compliance with Section 22 [~~21~~] of this administrative regulation governing postmortem examinations;

(i) Maintaining a medication record and medication status of a horse in his or her care;

(j) Promptly notifying the judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring proper bandages, equipment, and shoes;

(m) Ensuring the horse's presence in the paddock at least one (1) hour before post time or at a time otherwise prescribed by racing officials before the race in which the horse is entered;

(n) Personally attending in the paddock and supervising the preparation of a horse in his or her care, unless an assistant trainer fulfills such duties or the trainer is excused by the judges; and

(o) Attending the collection of a saliva, urine, blood, or other sample or specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

Section 16 [~~15~~] Licensed Veterinarians. A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the judges. A veterinarian shall report to the judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 17 [~~16~~] Veterinarians' Reports. (1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a KHRA 100-2 form, "Veterinarian Report of Horses Treated to be Submitted Daily", to the commission veterinarian containing the following information:

(a) The name of the horse treated,

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent information requested by the commission veterinarian.

(2) The KHRA-2 form shall be signed by the treating veterinarian.

(3) The KHRA-2 form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The KHRA-2 form shall be confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of the KHRA-2 form by the veterinarian or his or her designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 811 KAR 1:095.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as set forth in Section 19 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by commission personnel.

Section 18 [~~17.~~] Veterinarian's List (1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list if, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission veterinarian shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian or a licensed veterinarian approved by the commission.

(4) A horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or nonbetting), qualifying race, time trial, or official workout for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365 day period - thirty (30) days;

(c) Third incident within a 365 day period - 180 days;

(d) Fourth incident within a 365 day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as defined in this section.

(7) A horse shall be removed from the bleeder list only upon the direction of the commission veterinarian, who shall certify in writing to the judges the recommendation for removal.

(8) A horse that has been placed on a bleeder list in another jurisdiction may be placed on the bleeder list maintained by the commission veterinarian.

Section 19 [~~18.~~] Distribution of Purses, Barn Searches and Retention of Samples. (1) Purse money shall be distributed seventy-two (72) hours after a race unless the commission laboratory has issued a preliminary or final report indicating the presence of a prohibited drug, medication, substance or metabolic derivative in the saliva, urine, blood, body fluids or other sample or specimen taken from a horse.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the laboratory issues a positive finding, the Executive Director of the commission or the judges shall immediately authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) At the conclusion of the investigation, a report shall be prepared and filed with the Executive Director and Chairman of the commission detailing the findings of the investigation.

(5) If the purse money has been distributed, the judges shall order the money returned at the conclusion of an investigation finding that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(6) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its reasonable best efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 20 [~~19.~~] Other Prohibited Practices. In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited:

(1) The possession or use of a drug, medication, or substance by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission;

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the driver;

(2) Without the prior permission of the commission or its designee, the possession or use of a drug, medication or substance that has never been approved by the U. S. Food and Drug Administration (FDA) for use in humans or animals at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Research Drug Council;

(3) The possession or use of the following blood doping agents at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoetin;

(c) Oxyglobin®;

(d) Hemopure®; or

(e) Any substance that abnormally enhances the oxygenation of body tissue;

(4) The practice, administration or application of a treatment, procedure or therapy which may:

(a) Endanger the health or welfare of a horse, or

(b) Endanger the safety of a driver;

(5) The use of extracorporeal shock wave therapy or radial pulse wave therapy unless the following conditions are met:

(a) A treated horse shall not race for a minimum of ten (10) days following treatment;

(b) A veterinarian licensed to practice by the commission shall administer the treatment;

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds; and

(d) A report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the prescribed form within twenty-four (24) hours of treatment. The form to be used is the "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy;"

(6) The administration of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse within twenty-four (24) hours of a race in which the horse is entered;

(7) Without the prior permission of the commission veterinarian or his or her designee, based on standard veterinary practice for recognized conditions, the use of a nasogastric tube which is longer than six (6) inches for the administration of any substance within twenty-four (24) hours prior to the time of a race in which the horse is entered;

(8) A serum total carbon dioxide (TCO2) level that exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered; except, no violation shall exist if the TCO2 level is found to be normal for the horse following the quarantine procedure set forth in Section 20 of this administrative regulation;

(9) Possession or use of a blood gas machine by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission; and

(10) Possession or use of a shock wave therapy machine or radial pulse wave therapy machine by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 21.[~~20.~~] TCO2 Testing and Procedures. (1)(a) The presiding judge may order the prerace or postrace collection of blood samples from, and prerace or post race testing of, a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as directed by the presiding judge, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Prerace and postrace testing shall be done at a reasonable time, place, and manner as directed by the presiding judge.

(c) A sample consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the Executive Director of the commission shall be informed of the positive finding.

(d) If the sample is taken prior to the race and the TCO2 exceeds 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39.0 millimoles per liter in a horse to which furosemide has been administered, the judges shall scratch the horse from the race.

(e) Split Sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of the samples by the commission veterinarian; however, the collection and testing of a split sample for TCO2 testing shall be done at a reasonable time, place and manner directed by the commission veterinarian.

(f)The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO2 is determined to exceed 37.0 millimoles per liter in a horse to which furosemide has not been administered, or 39 0 millimoles per liter in a horse to which furosemide has been administered, and the licensed owner or trainer of the horse certifies in writing to the judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the judges but not for more than 120 hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be re-tested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by an commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, water, and, subject to the specific approval of the commission veterinarian, the horse's usual feed ration and supplements. In addition, subject to approval of the commission veterinarian, the horse shall be administered furosemide by the commission veterinarian in the same manner and at the same dosage as was provided to horses eligible for furosemide on the day which the horse in quarantine raced.

(f) If the commission veterinarian is satisfied that the horse's level of TCO2, as registered in the original test, is physiologically normal for that horse, the judges shall permit the horse to race. In this case, the judges may require repetition of the quarantine procedure set forth in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO2 level is physiologically normal.

Section 22.[~~21.~~] Postmortem Examination. (1) The commission veterinarian may require a postmortem examination by a qualified designee of the commission of a horse that dies or is destroyed at a location under the jurisdiction of the commission.

(2) The commission or its designee shall coordinate with the trainer or owner to determine and address any insurance requirements.

(3) The commission veterinarian may take possession of a horse that dies or is destroyed for postmortem examination. The commission veterinarian may submit saliva, blood, urine, and other samples and specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option and expense. The commission shall bear the cost of a necropsy that is required by the commission.

(4) The presence of a prohibited drug, medication, substance or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse that died during a pari-mutuel race shall constitute a violation of this administrative regulation.

Section 23.[~~22.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule", 09/08[~~(11/05)~~];

(b) "Declaration to remove a horse from the Administration of Furosemide KHRA 100-1", 8/06;

(c) "Veterinary Report Of Horses Treated To be Submitted Daily, KHRA 100-2", 8/06;

(d) "Split Sample Chain of Custody Form, KHRA 100-3", 8/06;

(e) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy, KHRA 100-4", 8/06;

(f) "Certificate of Termination of Lasix, KHRA 100-5", 8/06; and

(g) "Therapeutic AAS Administration Form", 09/08.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the KHRA Web site at www.khra.ky.gov.

ROBERT BECK, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008
FILED WITH LRC: September 5, 2008 at 4 p m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Tuesday, October 28, 2008, at 10 a.m. at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, October 21st, 2008, five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday, October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the use of medications in horses on race days at pari-mutuel thoroughbred horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all horses engaged in pari-mutuel horse racing in the Commonwealth of Kentucky, as regulated by the Kentucky Horse Racing Commission pursuant to KRS Chapter 230, compete on a level playing field, and that no horse enjoys an unfair advantage due to the use of performance-enhancing drugs or other prohibited medications.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.240(2) states in part as follows: "The authority shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." This regulation furthers the statutory goal above by setting forth the rules and prohibitions relating to the use of race day medications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative will clarify exactly which race day medications can be taken and in what amounts. It also establishes the procedures to be used for taking blood and urine samples from race horses, and the procedures to be used in testing the samples for prohibited drugs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation? The amendment to this administrative regulation creates an extensive new section banning the use of anabolic steroids, and setting forth the terms of a grace period during which penalties for the detection of anabolic steroids will be abated or mitigated somewhat.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ban the use of anabolic steroids, in order to ensure that horses racing in the Commonwealth of Kentucky compete on an equal basis with one another, without the use of anabolic steroids.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adding anabolic steroids to the prohibitions against improper drug use set forth 811 KAR 1:090. KRS 230.240(2) specifically grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the use of drugs in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by adding a more detailed provision concerning steroids to the comprehensive provisions regulating drug use already contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission currently licenses as standardbred racing participants 854 owners, 63 trainers, and 14 veterinarians. These are the individuals most affected by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Owners, trainers, and veterinarians will be required to comply with the ban on the use of anabolic steroids in horse racing.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No cost.

(b) On a continuing basis. No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Horse Racing Commission already has funding to administer this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by the amendment to this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment; the ban on steroids applies to all participants in racing on an even basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2 What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, as the agency promulgating this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.240(2), which grants the commission the authority to promulgate regulations concerning the use of medications in race horses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may require an additional detention barn worker to collect blood and urine samples in some situations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? Exact amount undetermined.

(d) How much will it cost to administer this program for subsequent years? Exact amount undetermined.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Enforcement
(Amendment)

811 KAR 1:095. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260(1), (3), 230.265(2), 230.290(2), 230.300, 230.320(1)

STATUTORY COMMISSION: KRS 230.215(2), 230.240(2), 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the Commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the disciplinary powers and duties of the judges and the Commission.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that such other person or entity would care for or train a horse, or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the Schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the Schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the Schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the Schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked pursuant to this administrative regulation pertaining to:

(a) A violation involving a Class A drug;

(b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;

(c) A third or subsequent violation of 811 KAR 1:090 for an excessive TCO2 level; or

(d) A third or subsequent violation of 811 KAR 1:090 involving shock wave or blood gas machines.

(8) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule.

(9) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines for Standardbreds.

Section 2. General Provisions. (1) An alleged violation of 811 KAR 1:090 shall be adjudicated in accordance with this administrative regulation, and with 811 KAR 1:100, 811 KAR 1:105, and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a prerace or postrace sample that is not classified in the Schedule, the Commission may establish a classification after consultation with either or both of the Racing Commissioners International and the Racing and Medication Consortium.

(3) The judges and the Commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the Withdrawal Guidelines shall be considered by the judges and the Commission as a mitigating factor to be used in determining violations and penalties.

(4) Pursuant to KRS 230 320, the Commission shall have the Commission to suspend or revoke the Commission-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked or a horse that has been suspended shall be denied access to locations under the jurisdiction of the Commission during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in calendar days.

(7) A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the Commission. If an appeal is pending, that fact shall be so noted.

(8) To protect the racing public and ensure the integrity of racing in the Commonwealth, a trainer whose penalty for a prior Class A violation or for a prior Class B third offense violation under this administrative regulation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association and the cost shall be borne by the trainer.

(9) A veterinarian who has engaged in prohibited practices in violation of 811 KAR 1:090, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing board of veterinary medicine by the judges.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(11) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the judges or the Commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing such overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the judges or the Commission.

(12) Any person who has been fined under this administrative regulation shall be suspended until fine has been paid in full.

(13) Payment of a fine directly or indirectly by a person other than the person upon whom it is imposed shall be prohibited and shall not serve to abate or satisfy any penalty imposed.

(14) Written or printed notice of the assessment of a penalty shall be made to the person penalized, notice shall be posted immediately at the office of the association, and notice shall be forwarded immediately to the office of the Commission, the United States Trotting Association, and the Association of Racing Commissioners International by the presiding judge or clerk of the course.

(15) If the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in such a race.

(16) A horse shall not have the right to compete while owned or controlled wholly or in part by a person whose license has been suspended or revoked. An entry made by or for a licensee whose license has been suspended or revoked or for a horse which has been suspended shall be held liable for the entrance fee without the right to compete unless the penalty is removed.

(17) An association shall not willfully allow a person whose license has been suspended or revoked to drive in a race, or a suspended or disqualified horse to start in a race or a performance against time.

(18) An association shall not willfully allow the use of its track or grounds by a licensee whose license has been suspended or revoked, or a horse that has been suspended.

(19) If a person is excluded from a pari-mutuel association by the association, the Commission shall be notified.

(20) A person subject to current suspension, revocation, or expulsion shall not act as an officer of an association. An association shall not, after receiving notice of the penalty, employ or retain in its employ an expelled, suspended, disqualified or excluded person at or on the track during the progress of a race meeting.

(21) A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) During a race meet at another operating track in this state where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(22) A penalty imposed by the United States Trotting Association or the racing commissions of other states shall be recognized and enforced by the Commission unless application is made for a hearing before the Commission, during which the applicant must show cause as to why the penalty should not be enforced against him in this state.

Section 3. Prior Offenses. (1) A prior offense occurring in Kentucky shall be considered, in accordance with the requirements of this section, by the judges and by the Commission in assessing penalties. A prior offense occurring in another racing jurisdiction shall be considered by the judges and the Commission in assessing penalties. The judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

(2) A prior offense occurring before the effective date of this administrative regulation shall not be considered.

(3) A prior offense involving a Class C drug or Class D drug may be considered as a prior offense if the act that constituted the offense was committed after the effective date of this administrative regulation and within one (1) year of the offense for which the person stands charged.

(4) A prior offense involving a Class A or B drug may be considered as a prior offense if the act that constituted the offense was committed after the effective date of this administrative regulation.

(5) A prior offense shall not be considered for purposes of enhancing a penalty if the drug, medication or substance that was the subject of the prior offense was of a lower class, pursuant to the Schedule, than the drug, medication or substance that is the subject of the offense for which the person stands charged.

Section 4. Penalties for Violations Not Related To Drugs or Medications. (1) A violation classified as a Category 1 violation shall be punishable by a suspension or revocation of licensing privileges from zero to thirty (30) days, in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine not to exceed $5,000.

(2) A violation classified as a Category 2 violation shall be punishable by a suspension or revocation of licensing privileges from thirty (30) to sixty (60) days in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine not to exceed $10,000.

(3) A violation classified as a Category 3 violation shall be punishable by a suspension or revocation of licensing privileges from sixty (60) days to permanent suspension or revocation in proportion to the seriousness of the violation. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter in an agreement to mitigate the suspension or revocation by agreeing to the payment of a fine up to $50,000 commensurate with the seriousness of the violation.

(4) A violation of 811 KAR Chapter 1 not otherwise specifically addressed shall be a Category 1 violation and shall be subject to the penalties set forth in subsection (1) of this section.

Section 5. Penalties for Violations Relating to Class A, B, C or D Drugs. (1) Class A drug. A licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, in violation of 811 KAR 1:090, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to three (3) years, in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(2) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $5,000 to $10,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) to five (5) years in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $10,000 to $20,000.

(c) For a third offense:

1. A suspension or revocation of licensing privileges for not less than five (5) years in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. A revocation of licensing privileges may be permanent. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $20,000 to $50,000

(d) Suspension of the owner's horse. A horse administered a Class A drug, in violation of 811 KAR 1:090, shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense - a suspension from zero to sixty (60) days;

2. For a second offense - a suspension from sixty (60) - 180 days;

3. For a third offense - a suspension from 180 - 240 days.

(2) Class B drug. A licensee who administers, or is a party to or is responsible for administering a Class B drug to a horse in violation of 811 KAR 1:090, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to sixty (60) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $500 to $1,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from one (1) month to six (6) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked..

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $2,500.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from two (2) months to one (1) year in proportion to the seriousness of the

violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $2,500 to $5,000.

(d) Suspension of the owner's horse. A horse administered a Class B drug, in violation of 811 KAR 1:090, shall be subject to a suspension from racing in Kentucky, as follows:

1. For a first offense - no suspension;

2. For a second offense - a suspension from zero - 60 days;

3. For a third offense - a suspension from sixty (60) - 180 days.

(3) Class C drug. A licensee who administers, or is a party to or is responsible for administering a Class C drug to a horse, in violation of 811 KAR 1:090, or is responsible for administering an overage of phenylbutazone or flunixin, in violation of 811 KAR 1:090, Section 8, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to ten (10) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $250 to $500.

(b) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) to thirty (30) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $500 to $1,000.

(c) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

2. The licensee whose license may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $2,500.

(4) Class D Drug.

(a) The penalty for a violation involving a Class D drug shall be a written warning to the trainer and owner.

(b) Multiple violations involving a Class D drug may result in a suspension of licensing privileges from zero to five (5) days in proportion to the seriousness of the violation and the facts of the case.

(c) The licensee whose licensing privileges may be suspended and the Commission may enter into an agreement to mitigate the suspension by agreeing to payment of a fine of not more than $250.

Section 6. TCO2 penalties. A person who violates or causes the violation of 811 KAR 1.090, Section 19(6), (7), or (8) shall be subject to the following penalties:

(1) For a first offense involving a positive pre-race test result, the licensee shall be issued a warning

(2) For a first offense involving a positive post-race test result:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $1,500.

(3) For a second offense involving a prerace or postrace test result:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,500 to $3,000.

(4) For a third offense involving a prerace or postrace test result:

(a) A suspension or revocation of licensing privileges from six (6) months to (1) year in proportion to the seriousness of the violation and the facts of the case, and forfeiture of purse money won. Section 8 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $3,000 to $5,000.

(5) Subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to forfeiture of purse money won.

(6) Suspension of the owner's horse. A horse that registers a TCO2 level in violation of 811 KAR 1:090 shall be subject to suspension from racing in the Commonwealth of Kentucky as follows:

(a) For a first offense - no suspension;

(b) For a second offense - a suspension from fifteen (15) to sixty (60) days;

(c) For a third offense - a suspension from sixty (60) days to 180 days;

(d) For a fourth offense - a suspension from eight (8) months to one (1) year.

(7) In any instance of a positive prerace TCO2 test result, the horse shall be scratched.

Section 7. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes a violation of 811 KAR 1:090, Section 19(5)(b), (9), or (10) regarding a shock wave machine or blood gas machine shall be subject to the following penalties:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from one (1) to three (3) months in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $1,000 to $5,000.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from ninety (90) to 180 days in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of $5,000 to $10,000.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from 180 days to one (1) year in proportion to the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to

mitigate the suspension or revocation by agreeing to payment of a fine of $10,000 to $20,000.

Section 8. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation or satisfaction of an inactive person. This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the Commission;

(b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked, or

(c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the Commission.

(4) A person who is responsible for the care, training or veterinarian services provided to a horse formerly under the care, training or veterinarian services of an inactive person shall.

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training and racing of the horse from a separate and independent checking account. Copies of the invoices for such expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 9. Other Disciplinary Measures. (1) A person who violates 811 KAR 1:090, Section 6, regarding furosemide and adjunct bleeder medication use on raceday shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 811 KAR 1:090, Section 8(1), for exceeding the concentration levels allowed for phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(3) A person who violates 811 KAR 1.090, Section 8(10), for administering a non-steroidal anti-inflammatory drug other than phenylbutazone or flunixin shall be treated the same as a person who has committed a Class C drug violation.

(4) A person who is responsible for more than one oral or intravenous administration of a Nonsteroidal Anti-Inflammatory Drug (NSAID) within twenty-four (24) hours of post time, in violation of 811 KAR 1:090, Section 8(1), shall be treated the same as a person who has committed a Class B drug violation.

(5) A person who violates 811 KAR 1:090, Section 19(2), shall be treated the same as a person who has committed a Class A drug violation.

(6) A person who violates 811 KAR 1:090, Section 19(3)(a), shall be treated the same as a person who has committed a Class A drug violation.

(7) A person who violates Section 2(15) of this administrative regulation shall be subject to a suspension or revocation of licensing privileges for up to one (1) year in proportion to the seriousness of the violation and the facts of the case and shall forfeit purse money won while in violation of Section 2(15). The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to $5,000.

(8) An association in violation of Section 2(16), (17), or (19) of this administrative regulation shall, together with its officers, be subject to a suspension or revocation of licensing privileges for up to thirty (30) days in proportion to the seriousness of the violation and the facts of the case. The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to $5,000.

Section 10. Disciplinary Measures by Judges. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the judges may impose one (1) or more of the following penalties.

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case; or

(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or from a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the judges may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed $5,000 in proportion to the seriousness of the violation and the facts of the case.

Section 11. Disciplinary Measures by the Commission. (1) Upon finding a violation or an attempted violation of 811 KAR Chapter 1 or KRS Chapter 230, if not otherwise provided for in this administrative regulation, the Commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or a licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation; or

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the Commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be excluded or ejected from association grounds or a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the Commission may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of up to $50,000.

(3) Upon appeal of a matter determined by the judges the Commission may or hearing de novo of a matter determined by the judges, reverse or revise the judges' ruling in whole or in part; except as to findings of fact by the judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the judges for a foul in a race.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule", (9/08)[~~(11/05)~~]; and

(b) "The Kentucky Horse Racing Commission Withdrawal

Guidelines for Standardbreds", (09/08)[~~(4/07)~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site, www.khra.ky.gov.

ROBERT BECK, Chairman
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 5, 2008

FILED WITH LRC: September 5, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, October 28, 2008, at 100 am, at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by Tuesday, October 21, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Friday, October 31, 2008. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859)246-2039

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth penalties for the prohibited use of medications in horses on race days at pari-mutuel horse race meetings in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that all horses engaged in pari-mutuel horse racing in the Commonwealth of Kentucky, as regulated by the Kentucky Horse Racing Commission pursuant to KRS Chapter 230, compete on a level playing field, and that no horse enjoys an unfair advantage due to the use of performance-enhancing drugs or other prohibited medications.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.240(2) states in part as follows: "The Commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race." This regulation furthers the statutory goal above by setting forth the rules and prohibitions relating to the use of race day medications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulations provides the penalty structure for the prohibited use of race day medications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation? The amendment makes amends the "Kentucky Horse Racing Commission Uniform Drug and Medication Classification Schedule" place anabolic steroids in the "B" penalty range, rather than the "C" range as previously classified. The amendment alters the "Kentucky Horse Racing Commission Withdrawal Guidelines" to increase the withdrawal period for anabolic steroids from 72 hours to 60 days.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more effectively ban the use of anabolic steroids in racing, by increasing the penalty range and the withdrawal period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by adjusting the penalty range and withdrawal times for the use of anabolic steroids in horse racing. KRS 230.240(2) specifically grants the Kentucky Horse Racing Commission the Commission to promulgate regulations governing the use of drugs in horse racing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by prescribing appropriate penalty ranges and withdrawal guidelines concerning the use of anabolic steroids.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission currently licenses The Kentucky Horse Racing Commission currently licenses as standardbred racing participants 854 owners, 63 trainers, and 14 veterinarians. These are the individuals who will be primarily affected by the regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Owners, trainers, and veterinarians will be required to comply with the ban on the use of anabolic steroids in horse racing.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No cost.

(b) On a continuing basis. No cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Horse Racing Commission already has sufficient funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by the amendment to this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment; the ban on steroids applies to all participants in racing on an even basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission, as the agency promulgating this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.240(2), which grants the Commission the Commission to promulgate regulations concerning the use of medications in race horses.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation may require an additional detention barn worker to collect blood and urine samples in some situations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first

year? Exact amount undetermined.

(d) How much will it cost to administer this program for subsequent years? Exact amount undetermined.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 6:030. Certificate of need expenditure minimums.

RELATES TO: KRS 216B.010-216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 216B 040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B 130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. (1) The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index for the twelve (12) month period ending December 31, 2007, represents 1 93 percent increase[~~2006, represents a 6.64 percent increase~~].

Section 2. (1) The capital expenditure minimum established in KRS 216B.015(7) shall be $2,656,686[~~$2,538,163~~].

(2) The major medical equipment minimum established in KRS 216B.015(16) shall be $2,656,686[~~$2,538,163~~].

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 12, 2008

FILED WITH LRC: September 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on October 21, 2008, at 9 a.m. in the Public Health Board Room, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shane P. O'Donley

(1) Provide a brief summary of:

(a) What this administrative regulation does. This administrative regulation provides for the annual adjustment of expenditure minimums for capital expenditures and major medical equipment as required by KRS 216B.130.

(b) The necessity of this administrative regulation: The annual adjustment of expenditure minimums for capital expenditures and major medical equipment is mandated by KRS 216B.130.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B:130 which requires the Cabinet for Health and Family Services to annually adjust certificate of need expenditure minimums.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the certificate of need statutes by complying with KRS 216B.130, which requires the Cabinet for Health and Family Services to annually adjust certificate of need expenditure minimums.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It will adjust the certificate of need capital expenditure minimum based on the U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the existing administrative regulation because KRS 216B.130 requires the Cabinet for Health and Family Services to annually adjust expenditure minimums.

(c) How the amendment conforms to the content of the authorizing statutes: Same as above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the certificate of need statutes (KRS Chapter 216B) by adjusting the expenditure minimums as required by statute for the twelve (12) month period beginning on the effective date of the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all individuals, businesses, organizations, and state and local governments seeking to apply for certificates of need. It is not yet known how many persons will actually apply for certificates of need.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The groups identified in question (3) will be impacted favorably by this administrative regulation which will increase certificate of need expenditure minimums, allowing providers and potential providers to fund more expensive projects without first obtaining a certificate of need.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not

increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Certificate of Need administrative regulation relates to licensed health services provided by local government, including but not limited to home health agencies and ambulance services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation will assist in the effective administration of the certificate of need statutes by complying with KRS 216B.130, which requires the Cabinet for Health and Family Services to annually adjust certificate of need expenditure minimums.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will increase certificate of need expenditure minimums, allowing providers to increase the expenditures that they may make without first obtaining a certificate of need.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated to state or local government.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:380. Child Support Enforcement Program application and interstate process.

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 405.430(5), 405.520, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 302.30, 302.31, 303.69, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795, and 405.520 authorize the secretary to promulgate administrative regulations to operate the Child Support Enforcement Program (CSEP)[~~(CSP)~~] in accordance with federal law and regulations. 45 C.F.R. 303.2 requires access to the child support application process to be provided to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

Section 1. Child Support Enforcement Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and

921 KAR 2:006.

2. The assignment shall:

a. Include members of the case for whom support rights apply; and

b. Be completed when applying for K-TAP or Kinship Care benefits using the application form incorporated by reference in 921 KAR 3:030.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the:

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been established; and

b. An assigned support obligation;

5. Enforcement of:

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP[~~CSP~~] shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall

1. Cooperate with the CSEP[~~CSP~~];

2. Review and approve a foster care child support referral;

3. Complete a change of status if a change occurs that relates to the child support process; and

4. Forward to the CSEP[~~CSP~~] a copy of the child support court documents.

(c)1. If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

a. Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or

b. Establish a child support obligation pursuant to subparagraph 2 of this paragraph.

2. The cabinet shall pursue the establishment of a child support obligation if:

a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and

b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP[~~CSP~~] shall obtain the following information, if available:

1. Medicaid case number;

2. Name of the noncustodial parent or obligor;

3. Social Security number of the noncustodial parent or obligor;
4. Name and Social Security number of the child;
5. Home address of the noncustodial parent or obligor; and
6. Name and address of the noncustodial parent or obligor's place of employment.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 1:011, Section 9, which shall be completed by using the application form incorporated by reference in 921 KAR 3:030.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 1:011, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP[~~CSP~~] the CS-140, Assignment of Rights and Authorization to Collect Support.

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP[~~CSP~~] shall make child support services available to any individual who:

1. Assigns rights for medical support only;
2. Applies for services pursuant to paragraph (c) of this subsection; or
3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP[~~CSP~~] shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP[~~CSP~~] is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1.a. Upon the request of a nonpublic assistance applicant, the CSEP[~~CSP~~] shall give an application packet to the applicant.

b. If the request is:

(i) Made in person, the packet shall be provided the same day; or

(ii) Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

2. The application packet shall include the:

a. CS-33, Non-K-TAP Application,

b. CS-168, Application for Direct Deposit; and

c. CS-11, Authorization and Acknowledgement of No Legal Representation.

3. In order to receive child support services, the applicant shall complete and return the:

a. CS-33, Non-K-Tap Application; and

b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a putative father and location-only case, services provided to a nonpublic assistance client through the CSEP[~~CSP~~] shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1)(b) and (c) of this administrative regulation.

(f) The CSEP[~~CSP~~] shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and social security number of the child;
2. Name of the custodial and noncustodial parent or obligor;
3. Social Security number of the custodial and noncustodial parent or obligor;
4. Date of birth of the custodial and noncustodial parent or obligor;
5. Home address or last known address of the custodial and noncustodial parent or obligor; and
6. Name and address of the custodial and noncustodial parent's or obligor'semployer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP[~~CSP~~] shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

(a) Location of the noncustodial parent or obligor;

(b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity based upon the receipt of either:

1. A court order; or
2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation;

(e) Enforcement of a:

1. Child support or medical support obligation; and
2. Spousal support obligation if the:

a. Client is the spouse or ex-spouse;

b. Child lives with the spouse or ex-spouse; and

c. Cabinet is collecting support on behalf of the child;

(f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual twenty-five (25) dollar fee assessed against a custodial parent who has never received assistance, as defined in 42 U S C 654(6)(b)(ii), during each Federal fiscal year in which $500 has been disbursed for the case; and

(h) For a Medicaid-only case type, application for health insurance coverage through an employer for the child if court or administratively ordered but not provided by either parent.

(2) The CSEP[~~CSP~~] shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

(a) referral from the public assistance agency;

(b) Foster care referral; or

(c) nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

(3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2.006 or 922 KAR 1:530.

(b) If the CSEP[~~CSP~~] has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP[~~CSP~~] shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, Section 24, location shall be attempted for a:

(a) Public assistance case referred to the CSEP[~~CSP~~]; or

(b) Nonpublic assistance case for which child support services are being provided.

(2) The CSEP[~~CSP~~] shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP[~~CSP~~] pursuant to KRS 205.712 and 205.730(5) 45 C.F.R. 303 69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSEP[~~CSP~~] shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. Interstate Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5902, and 45 C.F.R. 303.70, the CSEP[~~CSP~~] shall:

(1) Extend to an interstate child support case the same services available to an intrastate case; and

(2) Provide an agency in a responding state with sufficient and accurate information and documentation on the appropriate interstate transmittal forms, the:

(a) CS-98, General Testimony;

(b) CS-99, Affidavit in Support of Establishing Paternity; and

(c) CS-100, Uniform Support Petition.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's[~~CSP's~~] services and encourage their use may include:

(1) Public service announcements;
(2) Posters;
(3) Press releases;
(4) Videos;
(5) Annual reports;
(6) Newsletters;
(7) Mail inserts;
(8) Pamphlets; and
(9) Letters.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-11, Authorization and Acknowledgement of No Legal Representation", edition 1/09[~~3/08~~];

(b) "CS-33, Non-KTAP Application", edition 1/09[~~3/08~~];

(c) "CS-98, General Testimony", edition 1/09[~~10/06~~];

(d) "CS-99, Affidavit in Support of Establishing Paternity", edition 1/09[~~10/06~~];

(e) "CS-100, Uniform Support Petition", edition 1/09[~~10/06~~];

(f) "CS-140, Assignment of Rights and Authorization to Collect Support", edition 1/09[~~10/06~~]; and

(g) "CS-168, Application for Direct Deposit", edition 1/09[~~3/08~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601[~~Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621~~], Monday through Friday, 8 a.m. to 4:30 p m.

STEVEN VENO, Deputy Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 12, 2008

FILED WITH LRC: September 15, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2008 at 9 a.m. in the Public Health Board Room, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, phone (502) 564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shari Sullivan, CSE Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the process which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for child support application services and interstate process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050(1), 205.721, 205 795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-654, 657, 663, and 666, to specify the process by which an individual may apply for child support services. KRS 205.721 requires the cabinet to impose an annual fee of twenty-five dollars ($25) pursuant to 42 U.S.C. 654(6)(B)(ii), which shall be satisfied by withholding the fee from a child support disbursement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the cabinet for application service provision and interstate process for child support.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment adds wording in regards to the twenty-five (25) dollar annual fee per Federal fiscal year pursuant to 42 U.S.C. 654(6)(B)(ii), adopted in HB 405 2008 GA. This fee will come out of the child support disbursement after $500 has been disbursed and only if the custodial parent has never received K-TAP assistance. The following incorporated forms were updated: "CS-33, Non-KTAP Application," and "CS-140, Assignment of Rights and Authorization to Collect Support," to add language to notify the applicant of the twenty-five (25) dollar annual fee per Federal fiscal year and to change the program name because of the reorganization of the agency structure. The remaining forms were updated: "CS-11, Authorization and Acknowledgement of No Legal Representation," "CS-98, General Testimony," "CS-99, Affidavit in Support of Establishing Paternity," "CS-100, Uniform Support Petition," and "CS-168, Application for Direct Deposit", to change the program name and website because of the reorganization of the agency structure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate corrections and to update state forms used in accordance with KRS Chapters 405 and 407. The amendment will provide revisions to the incorporated forms that will improve child support policy and procedures and make corrections to the regulation in order to comply with the federal mandate of HB 405 2008 GA.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying how the fee will be assessed.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes through its updates to state forms incorporated by reference into this regulation and necessary technical corrections to ensure clarity and compliance with KRS Chapter 13A requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet carries approximately 49,400 child support cases, which will be subject to provisions contained within this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The incorporated materials have been updated to reflect the twenty-five (25) dollar fee per federal year and program name changed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will cost twenty-five ($25) dollars annually per Federal fiscal year for custodial parents who have never received K-TAP benefits for each case after the first $500 of child support has been disbursed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Enforcement of the twenty-five ($25) annual fee will allow the state of Kentucky to be in compliance with federal law and thereby avoid the substantial penalties which would occur for noncompliance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Incorporation of tracking and processing of the twenty-five (25) dollar fee collections in KASES will require one-

time administrative costs associated with programming changes. There will also be a minimal cost associated with the mailings to notify parents. The sum total of these costs is not projected to be prohibitive, and can be supported by the existing child support budget appropriations. However, failure to implement would place CHFS in conflict with federal and state law and could result in substantial penalty to the TANF federal grant.

(b) On a continuing basis: Ongoing incorporation of processing the twenty-five (25) dollar fee collections into existing automated processes of KASES should result in no significant fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include thirty-four (34) percent state general funds and sixty-six (66) percent federal funds under Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if the new, or by the change if it is an amendment: This administrative regulation clarifies the method of assessing the twenty-five (25) dollar fee authorized by KRS 205.721 as a result of House Bill 405 in the 2008 General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee was established in KRS 205.721 by HB 405 2008 GA.

(9) TIERING: Is tiering applied? This administrative regulation has tiering applied. This fee will come out of the child support disbursement after $500 has been disbursed and only if the custodial parent has never received public assistance on each case. This was federally mandated by 42 U.S.C. 654(6)(b)(ii), adopted in HB 405 2008 GA.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 651-654, 657, 663, 666

2. State compliance standards. KRS 194A.050(1), 205 721, 205.795, 405.520

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 654(6)(B)(ii), adopted in House Bill 405 by the 2008 General Assembly.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Income Support, Child Support Enforcement and local county attorney's offices are impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 651-654, 657, 663, 666, KRS 194A 050(1), 205 721, 205.795, 405.520

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The administrative regulation, as authorized by statute, is projected to generate approximately $1,235,000 in total fee collections annually. Of this amount, sixty-six (66) percent (estimated at $815,100) is required to be passed on to the federal government as their share of program income, and thirty-four (34) percent (estimated at $419,900) may be retained by the state. Existing processes within CHFS accounting systems will allow division and proper allocation of appropriate funds to each party. The revenue retained by the state will be utilized as matchable restricted funds for securing federal Child Support matching funds, replacing a portion of the state funds disallowed from match by other provisions of the Deficit Reduction Act of 2005.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue will continue at the same rate in subsequent years with the potential for modest increases based on the increase in the caseload.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost associated with the mailings to notify parents.

(d) How much will it cost to administer this program for subsequent years? Ongoing incorporation of processing the twenty-five (25) dollar fee collections into existing automated processes of KASES should result in no significant fiscal impact.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
Office of the Commissioner
(New Administrative Regulation)

17 KAR 5:010. Kentucky Medal for Freedom.

RELATES TO: KRS 40.353
STATUTORY AUTHORITY: KRS 40 353
NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.353 authorizes the Kentucky Department of Veterans Affairs (KDVA) to award the Kentucky Medal for Freedom to eligible recipients and to maintain a Kentucky Medal for Freedom honor roll.

Section 1. Definitions. (1) "Applicant" means a person, eighteen years old or older, who is seeking the Medal for Freedom on behalf of the deceased recipient.

(2) "Primary next of kin" means the person or persons with whom the Medal for Freedom is entrusted using the following order of priority: widow or widower; children; parents (unless legal custody was granted to another person); blood or adoptive relative granted legal custody; siblings in the order of age (oldest first); grandparents; other relative; or close friend or associate.

(3) "Recipient" means the deceased military person who was killed in action and is being honored by award of the Medal for Freedom.

Section 2. Application Procedure to Nominate Recipient. (1) Any adult, age eighteen (18) or older, may nominate someone to receive the Kentucky Medal for Freedom.

(2) The nomination process shall be initiated by filling out a Kentucky Medal for Freedom Application.

(a) The application may be obtained by downloading one from the Kentucky Department of Veterans Affairs website at http.//veterans.ky.gov/, or by requesting an application to be sent via U.S. postal service.

(b) All requests and inquiries concerning the Kentucky Medal for Freedom shall be directed to: Kentucky Department of Veterans Affairs, Kentucky Medal for Freedom Contact Person, 1111B Louisville Rd., Frankfort, Kentucky 40601.

(c) Each Medal for Freedom that is awarded under this Regulation shall be presented to the primary next of kin.

Section 3. Medal for Freedom Award Panel. (1) A panel of three full-time employees of the Kentucky Department of Veterans Affairs shall review all applications;

(2) The commissioner or the deputy commissioner shall act as chairperson for the award panel

(3) The other two (2) members of the Panel shall be chosen from among the senior staff of the department, such as the executive director, Office of Kentucky Veterans Centers; Cemetery Branch Manager; Field Operations Branch Manager; cemetery directors; and administrators of the state veterans nursing homes;

(4) The award panel shall decide whether an application shall be approved and, if so, which primary next of kin shall receive the medal

(5) Multiple medals for the same recipient may be awarded at the discretion of the award panel.

Section 4. Kentucky Medal for Freedom Honor Roll. The Department shall establish a permanent honor roll, listing each recipient's name and branch of service.

(1) The honor roll shall reside on a permanent basis in the Office of the Commissioner, Kentucky Department of Veterans Affairs, Frankfort, Kentucky.

(2) The Honor Roll shall be made available for display at special occasions such as Memorial Day, Veterans Day, and during special ceremonies conducted at state and federal cemeteries located throughout the Commonwealth.

(3) During every legislative session, the department shall supply the Speaker of the Kentucky House of Representatives and the President of the Kentucky Senate a copy of the then-current Medal for Freedom recipients for publication in each chamber.

Section 5. Incorporation by Reference. (1) Kentucky Medal for Freedom application dated January 1, 2009, is incorporated by reference.

LESLIE E. BEAVERS, Commissioner
APPROVED BY AGNECY: September 12, 2008
FILED WITH LRC: September 15, 2008
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 9 a.m, at Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Pamela Cypert, Executive Advisor, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Pamela Cypert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules for implementing KRS 40.353, including how citizens may apply for the Medal for Freedom, who awards the medal, and to whom it is entrusted.

(b) The necessity of this administrative regulation. This administrative regulation is necessary to ensure that those men and women serving in the military who have been killed in action will receive a lasting memorial for theirs, the ultimate sacrifice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 40.353 authorizes the Department of Veterans' Affairs to promulgate any administrative regulations to carry out the statutory requirement to award this medal to eligible recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by carrying out the requirements identified in KRS 40 353.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of. Not an amendment

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes.

(3) List the type and number of individuals, businesses, organizations or state and local government affected by this administrative regulation: This regulation affects those citizens who were in the military and were killed in action. It also affects the surviving family members of these recipients. Finally, it affects the Commonwealth in general since the Honor Roll of Medal for Freedom recipients will be published during each legislative session.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including.

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question: No cost associated with the awarding of these medals, or other administrative details caused by the awarding

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to all will be intangible and relate to Kentucky values such as the defense of this nation through a fighting man or woman's ultimate sacrifice.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: $3,000 authorized and appropriated.

(b) On a continuing basis: $3,000 on a fiscal year basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase is required.

(8) State whether of not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees or increase in existing fees.

(9) TIERING: Is tiering applied? No tiering was applied in this administrative regulation and none is necessary.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Veterans Affairs.

3. Identify each state or federal statute or federal regulation that requires or authonzes the action taken by the administrative regulation KRS 40.353.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

c. How much will it cost to administer this program for the first year? $3,000

d. How much will it cost to administer this program for subsequent years? $3,000 per fiscal year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation·

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Administrative Regulation)

105 KAR 1:345. Rollovers and transfers of contributions to other plans.

RELATES TO: KRS 16.510-16.652, 61.515-61.705, 78 520-78 852, 26 U.S.C. secs. 401(a)(31), 402(c), 408(d)(3)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: For purposes of compliance with 26 U.S.C. 401(a)(31), this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Section 1. (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is:

(a) One of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent such distribution is required under 26 U.S.C. 401(a)(9);

(c) The portion of any distribution that is not includible in gross income; and

(d) Any other distribution that is reasonably expected to total less than $200 during the year.

Section 2. (1) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income However, such portion may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution plan described in 26 U.S.C. 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in 26 U S.C. 401(a) or to an annuity contract described in 26 U.S.C. 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in 26 U S C. 414(p).

(2) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in 26 U.S C. 408(a);

(b) An individual retirement annuity described in 26 U S C. 408(b);

(c) An annuity plan described in 26 U.S.C. 403(a);

(d) A qualified trust described in 26 U.S.C. 401(a);

(e) Effective January 1, 2002, an annuity contract described in 26 U S C. 403(b),

(f) Effective January 1, 2002, a plan eligible under 26 U.S.C. 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or

(g) Effective January 1, 2008, a Roth IRA described in 26 U.S.C. 408A.

(3)(a) "Distributee" means an employee or former employee It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in 26 U S.C. 414(p). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S C. 401(a)(9)(E) However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(b) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

RANDY OVERSTREET, CHAIR

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines eligible rollover distributions, eligible retirement plans, distributes, and direct rollover for purposes of compliance with federal tax law.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to defines eligible rollover distributions, eligible retirement plans, distributes, and direct rollover for purposes of compliance with federal tax law.

(c) How this administrative regulation conforms to the content of the authorizing statutes This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S C. 401(a)

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by defining eligible rollover distributions, eligible retirement plans, distributes, and direct rollover for purposes of compliance with federal tax law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems who become eligible to withdraw their contributions and decide to rollover or transfer their contributions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If members seek to rollover or transfer their eligible rollover contributions, the members will be required to rollover or transfer their eligible rollover contributions to eligible retirement plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Ordinary administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4 Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. secs. 401(a)(31), 402(c), 408(d)(3)

2 State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Administrative Regulation)

105 KAR 1:400. Federal taxation limitation year.

RELATES TO: KRS 61.645(9)(g)
STATUTORY AUTHORITY: KRS 61.645(9)(g)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the purposes and provisions of KRS 61.510 to 61.705, 16.510 to 16 652, and 78.510 to 78.852. This administrative regulation concerns the administration of testing contribution and benefit limits in accordance with 26 U.S.C. Section 415.

Section 1. Definitions. (1) "Fiscal year" as defined by KRS 16.505(32), 61.510(19), and 78.510(19), shall be the limitation year as set out in 26 U S.C. Section 415 for determining contribution and benefit limits in the plans administered by the Kentucky Retirement Systems.

(2) "415(b) limit" refers to the limitation on benefits established by 26 U S C. 415(b).

(3) "415(c) limit" refers to the limitation on annual additions established by 26 U S C. 415(c).

Section 2. Basic 415 Limitations. This section applies to all plans administered by Kentucky Retirement Systems. Subject to the provisions of this regulation, benefits paid from, and employee contributions made to, these plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S C. 415.

Section 3. Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a KRS plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

Section 4. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a KRS plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 5 Basic 415(b) Limitation. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in 26 U.S.C. 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and subject to any additional limits that may be specified in this section. In no event shall a member's annual benefit payable in any limitation year from a KRS plan be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S C. 415(d) and the regulations thereunder.

Section 6. Definition of Annual Benefit. For purposes of 26 U.S.C. 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U S C. 415(n)) and to rollover contributions (as defined in 26 U.S C. 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations

Section 7. Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under a KRS plan is other than the form specified in Section 6 of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S C. 417(e)(3) does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the KRS plan commencing at the same annuity starting date as the form of benefit to the member; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions:

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the KRS plan for actuarial experience,

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate the in effect for the first day of the plan year with a one (1) year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the morality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05

Section 8. Benefits Not Taken into Account for 415(b) Limit. (1) For purposes of this section, the following benefits shall not be taken into account in applying these limits.

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity,

(3) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 9. Other Adjustments in 415(b) Limitation. (1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be re-

duced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of 26 U.S.C. 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a $160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for subsection (1) of this section shall not apply.

(3) The reductions provided for in subsection (1) of this section shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section 10. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under Section 1(2) multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below ten (10) percent. The reduction provided by this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

Section 11. $10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415(b) limit if the benefits payable, with respect to such member under a KRS plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed $10,000 for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

Section 12. Effect of COLA without a Lump Sum Component on 415(b) Testing. Effective on and after January 1, 2003, for purposes of applying the 415(b) limit to a member with no lump sum benefit, the following will apply:

(1) A member's applicable 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;

(2) To the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the 415(b) limit;

(3) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d), and the Treasury Regulations thereunder.

Section 13. Effect of COLA with a Lump Sum Component on 415(b) Testing. On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by 26 U.S.C. 415(b) and applicable Treasury Regulations.

Section 14. 415(c) Limit. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of $40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100% of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, provided; however, that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another definition of compensation that is permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation, is specified by a KRS plan, compensation will be defined as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under 26 U.S.C. 6041(d), 6051(a)(3), and 6052 and will be determined without regard to any rules under 26 U.S C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of two and one-half (2 1/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued.

(c) Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Section 15. Service Purchases under Section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a KRS plan, then the requirements of 26 U.S.C. 415(n) will be treated as met only if:

(1) The requirements of 26 U.S C. 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of the 415(b) limit; or

(2) The requirements of 26 U.S.C. 415(c) are met, determined by treating all such contributions as annual additions for purposes of the 415(c) limit,

(3) For purposes of applying this section, a KRS plan will not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this subparagraph and will not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit:

(a) Recognized by a KRS plan for purposes of calculating a member's benefit under a KRS plan;

(b) Which such member has not received under a KRS plan; and

(c) Which such member may receive only by making a voluntary additional contribution, in an amount determined under a KRS plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit;

(d) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (b) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under a KRS

plan.

(5) The KRS plan will fail to meet the requirements of this section if.

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this paragraph before the member has at least five (5) years of participation under a KRS plan.

(6) For purposes of subsection (5) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(a) Service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S C. 415(k)(3));

(b) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described paragraph (a) of this subsection of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the KRS plan.

(7) In the case of service described in subsection (6)(a), (b), or (c) of this section, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(8) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer).

(a) The limitations of subsection (5) of this section will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a KRS plan will apply to such amounts and any benefits attributable to such amounts.

(9) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a KRS plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in a KRS plan before January 1, 1998.

Section 16. Modification of Contributions for 415(c) and 415(n) Purposes. Notwithstanding any other provision of law to the contrary, the department may modify a request by a member to make a contribution under to a KRS plan if the amount of the contribution would exceed the limits provided in Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the department may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to subsection (1) of this section will not avoid a contribution in excess of the limits imposed by 26 U.S.C. 415(c) or 415(n), the department may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 17. Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the KRS plan with respect to an amount previously refunded upon a forfeiture of service credit under the KRS plan or another governmental plan maintained by the State or a local government within the state shall not be taken into account for purposes of the 415(b) or (c) limits.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: August 21, 2008

FILED WITH LRC: September 2, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact. J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clearly identifies a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly identify a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary for Kentucky Employees Retirement System, State Police Retirement System, and County Employees Retirement System to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by clearly identifying a "limitation year" for testing contribution limits and benefit payment limits under the Code and other matters for purposes of compliance with federal tax law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of Kentucky Retirement Systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Members will only be able to receive retirement benefits or make contributions in accordance with federal limitations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with federal and state law.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fee or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. Section 415

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statute requires compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Repealer)

301 KAR 2:227. Repeal of 301 KAR 2:223.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150 240, 150.305, 150.330, 150.340, 150.360, 150 600, 15.603, 150.630, 150.990, 50 C.F.R. Parts 20, 21

STATUTORY AUTHORITY: KRS 150 025(1), 150.600(1), 50 C.F.R. Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: 50 C.F.R. Parts 20 and 21 establish Canada goose quota and require the state to close goose hunting season if these quotas are reached. KRS 150.025(1) and 150.600(1) authorize the department to promulgate administrative regulations governing the taking of waterfowl. This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. The language in 301 KAR 2:223 has been amended by other administrative regulations and is therefore no longer pertinent.

Section 1. 301 KAR 2:223, Waterfowl reporting requirements, is hereby repealed.

BENJY KINMAN, Acting Deputy Commissioner
For Dr. Jonathan W. Gassett, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: September 11, 2008

FILED WITH LRC: September 15, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 8 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This regulation removes special Canada goose permits and reporting requirements in the Northeast Goose Zone as approved by the Fish and Wildlife Commission.

(b) The necessity of the administrative regulation: This administrative regulation established reporting requirements for waterfowl hunters in the Northeast Goose Zone specific to the Cave Run Lake region of the state. These requirements are no longer necessary to monitor the harvest within this zone. This change remains consistent with long-term management efforts for regional populations.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) and 150.600(1) authorizes the department to establish waterfowl hunting requirements in accordance with maintaining season dates and limits.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing the migratory bird

hunting seasons and area specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How does the amendment conform to the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation. N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). N/A

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the state Fish and Game Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees. No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all migratory game bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 4:110. Administration of drugs to wildlife.

RELATES TO: KRS 150.025

STATUTORY AUTHORITY: 2008 Ky Acts ch.133, sec.5

NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky Acts ch.133, sec.5 instructs the department to promulgate administrative regulations that restrict a person from administering drugs to noncaptive wildlife. This administrative regulation prohibits the administration of drugs to wildlife and creates the necessary exceptions. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Captive wildlife" means wildlife legally kept in confinement by fence or other structure or restraint intended to prevent escape and does not include fish.

(2) "Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of any wildlife.

(3) "Noncaptive wildlife" means wildlife not legally kept in confinement by fence or other structure or restraint intended to prevent escape and does not include fish.

Section 2. Administration of Drugs. Except as provided in this administrative regulation, a person shall not administer drugs to noncaptive wildlife without written authorization from the commissioner.

Section 3. Petitions. (1) Persons or entities shall petition the commissioner in writing for authorization to administer drugs to noncaptive wildlife. Written petitions shall include:

(a) A biological or sociological justification for the need to administer a drug to noncaptive wildlife;

(b) A literature review of the known and potential effects of the drug on individual animals, the wildlife population, and potential consumers of wildlife; and

(c) A detailed plan and timeline for administration of the drug(s).

(2) The commissioner may issue a waiver for the petition requirement for authorization to administer drugs to noncaptive wildlife for specific situations involving:

(a) Public safety; or

(b) Wildlife disease outbreaks.

Section 4. Exemptions. This regulation does not apply to: (1) The administration of drugs to captive wildlife including captive cervids;

(2) The treatment of sick or injured wildlife by:

(a) A licensed veterinarian;

(b) A holder of a wildlife rehabilitation permit; or

(c) A holder of a valid scientific collection permit;

(3) The administration of drugs by Commercial Nuisance Wildlife Control operators licensed by the department as set forth in 301 KAR 3:120;

(4) Employees of federal or state government in the performance of their official duties related to public health, wildlife management, or wildlife removal.

Section 5. Disposition of Wildlife. An officer of the department may take possession or dispose of any noncaptive wildlife when the officer has probable cause to believe the noncaptive wildlife

have been administered drugs in violation of this section.

BENJY KINMAN, Acting Deputy Commissioner
For Dr. Jonathan Gassett, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: September 11, 2008
FILED WITH LRC: September 15, 2008 at 11 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2008, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation restricts the ability of people to administer drugs to noncaptive wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent the administration of drugs to wildlife by untrained individuals, which may have unforeseen consequences for wildlife populations and public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2008 Ky Acts ch.133, sec.5 instructs the department to promulgate administrative regulations that restricts the administration of drugs to noncaptive wildlife. This administrative regulation prohibits the administration of drugs to noncaptive wildlife and creates the necessary exceptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purpose of 2008 Ky Acts ch.133, sec.5 by prohibiting the administration of drugs to wildlife.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any individual who intends to administer drugs to noncaptive wildlife. Also, it may impact local governments who are interested in controlling wildlife within their jurisdictions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. All persons that intend to administer drugs to noncaptive wildlife will need to petition the commissioner in writing for authorization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost associated with the petition process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will ensure that unintended consequences will be avoided for individuals who wish to administer drugs to noncaptive wildlife.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation will result in no initial change in administrative cost for the Kentucky Department of Fish and Wildlife Resources.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish, increase or decrease any fees.

(9) TIERING: Is tiering applied? Tiering was not used because everyone requesting to administer drugs to noncaptive wildlife will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Division of Wildlife and cities and counties who wish to administer drugs to wildlife will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2008 Ky Acts ch.133, sec.5

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Repealer)

401 KAR 52:081. Repeal of 401 KAR 52:080.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7661-7661(f)

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7661-7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. The administrative regulation being repealed established emission limits for Title V permitting exemptions, and, upon repeal, will require sources to transition from their current state-origin permit to either a conditional major or Title V permit. There is no federal mandate for the repeal.

Section 1. 401 KAR 52.080, Regulatory limit on potential to emit, is hereby repealed.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: August 12, 2008

FILED WITH LRC: August 27, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this repealer regulation will be held on October 28, 2008, at 10 a.m. (local time) in the Conference Room of the Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed repeal. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing. If you do not wish to be heard at the hearing, you may submit written comments on the proposed regulation. Written comments will be accepted until close of business on October 31, 2008. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Gerry Ennis, Environmental Technologist III, Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, fax (502) 564-3666, and email: gerry.ennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gerry Ennis

(1) Provide a brief summary of.

(a) What this administrative regulation does: This regulation repeals an existing regulation, 401 KAR 52:080, Regulatory limit on potential to emit.

(b) The necessity of this administrative regulation: The repeal of 401 KAR 52:080 will require sources to transition from the state-origin permits to Conditional Major or Title V permits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: With the repeal of 401 KAR 52:080, sources will be required to apply for a Conditional Major or Title V permit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation repeals an existing regulation that has resulted in confusion and is no longer necessary.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation is not an amendment.

(d) How the amendment will assist in the effective administration of statutes: This regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. There are an estimated sixteen sources currently affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Sources will be given twelve months to submit a new application for either a Title V permit under 401 KAR 52:020, or a Conditional Major permit under 401 KAR 52.030.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this repeal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Conditional Major and Title V permit requirements may be less restrictive than the current state-origin permits, allowing sources greater operational flexibility.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The cabinet will not incur any additional costs by repealing 401 KAR 52 080.

(b) On a continuing basis: There are no continuing costs associated with this repeal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with the repeal of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to repeal 52:080.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This regulation does not establish any fees, nor will it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering does not apply to this repealer regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?Yes

2. State what units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This repeal impacts only the Energy and Environment Cabinet, Department for Environmental Protection, Division for Air Quality Permitting Program. The repeal of this administrative regulation will not apply to any unit of state or local government other than the Division for Air Quality.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This

regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this proposed repeal.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this proposed repeal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There is no federal mandate for this proposed repeal.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation imposes no stricter standards or additional requirements.

PUBLIC PROTECTION CABINET
Department of Insurance
Consumer Protection and Education Division
(Repealer)

806 KAR 2:091. Repeal of 806 KAR 2:090, 806 KAR 2:096.

RELATES TO: KRS 91A.080, 304.12-080, 304.12-090

STATUTORY AUTHORITY: KRS 13A 310, KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 2 090, Fee for collecting city, county or urban county government insurance tax, which is no longer needed in that it prescribes the same or similar collection fee as provided for in KRS 91A.080(4), as prohibited by KRS 13A-210(2)(e). This administrative regulation repeals 806 KAR 2:096, Disclosure of local government premium taxes; unfair discrimination, which is no longer required because disclosure requirements have been enacted in KRS 91A.0810.

Section 1. The following administrative regulations are hereby repealed:

(1) 806 KAR 2:090, fee for collecting city, county or urban county government insurance tax; and

(2) 806 KAR 2:096, disclosure of local government premium taxes.

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 15, 2008

FILED WITH LRC: September 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2008, at 9 am at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 23, 2008, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 2:090 and 806 KAR 2.096.

(b) The necessity of this administrative regulation: This administrative regulation will repeal 806 KAR 2:090 because it restates the statutory requirement in KRS 91A.080(4) and 806 KAR 2.096 because KRS 91A.0810 has been enacted requiring insurers to follow different disclosure requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate regulations to aid in the effectuation of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. These administrative regulations are no longer necessary and therefore the Department wishes to repeal these administrative regulations

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove administrative regulations that are no longer needed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could have an affect on the approximately 1,500 insurers doing business in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The repeal of these administrative regulations should not have an affect on insurers doing business in Kentucky because insurers are required to comply with the statutory requirements for collection fees and disclosure of local government premium taxes. Additionally, because the disclosure requirements related to local government premium taxes have changed as a result of the recent enactment of 08 RS HB 524, repealing 806 KAR 2:096 will eliminate confusion with regard to the process for disclosure of the tax.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There should not be any initial cost to implement this regulation.

(b) On a continuing basis: There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Because this administrative regulation is proposing to repeal an existing administrative regulation, there should not be any cost for implementing or enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation repeals 806 KAR 2.090 and 806 KAR 2:096 in their entirety.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A-310, 304.2-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation repeals existing regulations and should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation repeals existing regulations and should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation repeals existing regulations and, therefore, there should be no revenue generated in subsequent years.

(c) How much will it cost to administer this program for the first year? This regulation repeals existing regulations, and should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation repeals existing regulations and, therefore, there is no cost for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examination Division
(Repealer)

806 KAR 2:111. Repeal of 806 KAR 2:110.

RELATES TO: KRS 304.2-210, 304.2-230, 304 2-250
STATUTORY AUTHORITY: KRS 13A.310, KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010 KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation repeals 806 KAR 2:110, Financial examination of insurers, which is no longer required because its provisions have been enacted in 2008 RS HB 590 and codified in KRS 304 2-210.

Section 1. 806 KAR 2.110, Financial examination of insurers, is hereby repealed:

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY THE AGENCY: September 15, 2008
FILED WITH LRC: September 15, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2008, at 9 am at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 23, 2008, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 2:110.

(b) The necessity of this administrative regulation: This administrative regulation will repeal 806 KAR 2:110 because its contents have now been enacted in 2008 RS HB 590, and codified in KRS 304.2-210.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate regulations to aid in the effectuation of the Insurance Code. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. This administrative regulation is no longer necessary and therefore the department wishes to repeal this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will remove an administrative regulation that is no longer needed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could have an effect on the approximately 1,500 insurers doing business in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The repeal of this administrative regulation should not have an effect on insurers doing business in Kentucky because insurers are required to continue to comply with the requirements for financial examinations, which have been moved from the regulation to the statute through the enactment of 2008 RS HB 590.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There should not be any initial cost to implement this regulation.

(b) On a continuing basis: There should be no cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Because this administrative regulation is proposing to repeal an existing administrative regulation, there should not be any cost for implementing or enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since this administrative regulation repeals 806 KAR 2:110 in its entirety.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310, 304.2-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation repeals an existing regulation and should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation repeals an existing regulation and should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation repeals an existing regulation and, therefore, there should be no revenue generated in subsequent years.

(c) How much will it cost to administer this program for the first year? This regulation repeals an existing regulation and should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation repeals an existing regulation and, therefore, there is no cost for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(New Administrative Regulation)

806 KAR 9:350. Recognition of financial planning certification and designation for receipt of fees and commissions.

RELATES TO: KRS 304.9-350

STATUTORY AUTHORITY: KRS 304.2-110, 304 9-350(8)

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-350(8) authorizes the Office of Insurance to promulgate an administrative regulation to recognize a formal financial planning certification or designation for the purposes of receiving a fee for financial planning services and the sale, solicitation or negotiation of life insurance or annuities for the same insurance risk. This administrative regulation sets forth the listing of recognized financial planning certifications and designations.

Section 1. Recognition of Financial Planning Certification and Designation. For purposes of KRS 304.9-350(8), the Department of Insurance recognizes the following financial planning certifications and designations:

(1) Accredited Asset Management Specialist (AAMS);
(2) Accredited Estate Planner (AEP);
(3) Associate Financial Advisor (AFA);
(4) Accredited Financial Consultant (AFC);
(5) Associate, Financial Services Institute (AFSI);
(6) Accredited Wealth Manager Advisor (AWMA);
(7) Board Certified in Estate Planning (BCE);
(8) Chartered Asset Manager (CAM);
(9) Chartered Advisor for Senior Living (CASL);
(10) Certificate in Investment Performance Measurement (CIPM);
(11) Certified Estate Advisor (CEA);
(12) Certified Estate Planner (CEP);
(13) Certified Financial Planner (CFP);
(14) Certified Fund Specialist (CFS);
(15) Certified Investment Management Analyst (CIMA);
(16) Certified Pension Consultant (CPC);
(17) Certified Public Accountant (CPA);
(18) Chartered Financial Analyst (CFA);
(19) Chartered Financial Consultant (ChFC);
(20) Chartered Life Underwriter (CLU);
(21) Chartered Market Technician (CMT);
(22) Chartered Mutual Fund Counselor (CMFC);
(23) Chartered Portfolio Manager (CPM);
(24) Chartered Senior Financial Planner (CSFP);
(25) Chartered Trust and Estate Planner (CTEP);
(26) Fellow, Financial Services Institute (FFSI);
(27) Fellow of the Life Management Institute (FLMI);
(28) Financial Services Specialist (FSS);
(29) Master Financial Advisor (MFA);
(30) Master Financial Manager (MFM);
(31) Master Financial Professional (MFP);
(32) Masters of Science in Financial Services (MSFS);
(33) Personal Financial Specialist (PFS);
(34) Professional Financial Advisor (PFA);
(35) Qualified Plan Financial Consultant (QPFC);
(36) Registered Financial Specialist (RFS);
(37) Registered Financial Planner (RFP);
(38) Senior Registered Financial Planner (SRFP);

SHARON CLARK, Commissioner
ROBERT VANCE, Secretary

APPROVED BY AGENCY: September 15, 2008
FILED WITH LRC: September 15, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 30, 2008 at 9 a.m., (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 23, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. DJ Wasson, Kentucky Department of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the listing of recognized financial planning certifications and designations. Individuals holding one of the recognized certifications or designations can receive a fee for financial planning services and a commission for the sale, solicitation and negotiation of life insurance or annuities for the same insurance risk.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement HB 334, Section 1(8), as enacted by the 2008 General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.9-350(8) authorizes the Office of Insurance to promulgate an administrative regulation to recognize a formal financial planning certification or designation for the purposes of receiving a fee for financial planning services and the sale, solicitation or negotiation of life insurance or annuities for the same insurance risk. This administrative regulation sets forth the listing of recognized financial planning certifications and designations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the listing of recognized financial planning certifications and designations that would allow an individual to qualify for an exemption to KRS 304.9-350 and, therefore, receive a fee for financial planning services and a commission for the sale, solicitation and negotiation of life insurance or annuities for the same insurance risk.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 47,000 insurance agents with a line of authority to sell life insurance or annuities in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals wanting to receive both a fee for financial planning services and a commission for the sale, solicitation an negotiation of life insurance or annuities for the same insurance risk will be required to hold one of the designations or certifications listed in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be a specific cost to comply with this administrative regulation. However, there are costs to complete the required study and obtain specific financial planning designations. Those costs vary with the programs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will be permitted to receive both a fee for financial planning services and a commission for the sale, solicitation and negotiation of life insurance or annuities for the same insurance risk.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all licensed agents.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.9-350(8)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative

regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Securities
(Repealer)

808 KAR 10:041. Repeal of 808 KAR 10:040.

RELATES TO: KRS 292.330(13)(A)7
STATUTORY AUTHORITY: KRS 292.330(12)(e), 292.500(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(13)(a)7 authorizes the commissioner of the Department of Financial Institutions to take disciplinary action against the registration of broker-dealers, agents, investment advisers, and investment adviser representatives if any of those persons have engaged in a dishonest or unethical practice. KRS 292.330(12) authorizes the commissioner to prohibit unreasonable charges, profits, commissions, or other compensation for broker-dealers, agents, investment advisers, and investment adviser representatives.

Section 1. 808 KAR 10:040, Examples of dishonest or unethical practice, is hereby repealed.

CHARLES VICE, Commissioner
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: September 10, 2008
FILED WITH LRC: September 15, 2008 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:
CONTACT PERSON: William Owsley, Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 236, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William B. Owsley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation formerly provided examples of dishonest or unethical practices in the securities business.
(b) The necessity of this administrative regulation: The regulation is no longer necessary because of the adoption of two new regulations (808 KAR 10:440 and 808 KAR 10:450) relating to the same subject matter.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.330(13)(a)7 authorizes the commissioner of the Department of Financial Institutions to take disciplinary action against the registration of broker-dealers, agents, investment advisers, and investment adviser representatives if any of those persons have engaged in a dishonest or unethical practice. KRS 292.330(12) authorizes the commissioner to prohibit unreasonable charges, profits, commissions, or other compensation for broker-dealers, agents, investment advisers, and investment adviser representatives. The former regulation provided examples of dishonest and unethical practices.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is no longer needed.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this regulation: N/A
(c) How the amendment conforms to the content of the authorizing statute: N/A.
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation formerly affected all broker-dealers, broker-dealer representatives, issuer agents, investment advisers, and investment adviser representatives selling or offering for sale securities in Kentucky or furnishing investment advisory services in Kentucky.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: N/A
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A
Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: N/A
(b) On a continuing basis: N/A
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost of examinations and investigations.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.
(9) TIERING: Is tiering applied? Tiering is not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions, Division of Securities will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 292.330(12)(e) and 292.500(3).
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on expenditures or revenues.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? This administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation simply defines unethical or dishonest practices which broker-dealers and agents registered in Kentucky should avoid. These broker-dealers, agents, and investment advisers are already subject to periodic examination and investigation by the Division of Securities.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Securities
(New Administrative Regulation)

808 KAR 10:440. Examples of Dishonest or unethical practice for broker-dealers and agents.

RELATES TO: KRS 292.330(13)(a)7

STATUTORY AUTHORITY: KRS 292.330(12)(e), 292 500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(13)(a)7 authorizes the commissioner of the Department of Financial Institutions to take disciplinary action against the registration of a broker-dealer or agent if that person has engaged in a dishonest or unethical practice. KRS 292.330(12)(e) authorizes the commissioner to prohibit unreasonable charges, profits, commissions, or other compensation for broker-dealers and agents. This administrative regulation provides examples of dishonest and unethical practices by broker-dealers and agents and restates the consequences of engaging in such unacceptable conduct or practices.

Section 1. Broker-dealers shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers and the conduct of their business. Acts and practices such as the following are considered contrary to such standards. Violations may result in a fine, suspension or revocation in proportion to the seriousness of the offense:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment of free credit balances reflecting completed transactions of any of its customers;

(2) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to timely respond to a formal written demand or complaint by a customer;

(3) Attempting to enforce a condition, stipulation or provision against a customer in Kentucky if the result would:

(a) Leave the customer without the choice of a forum for dispute resolution in the state of Kentucky; or

(b) Limit the timeliness of an action to a period less than that established in KRS 292.480;

(4) Failing to segregate a customer's securities held in safekeeping;

(5) Except as permitted by the rules of the Securities and Exchange Commission, hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;

(6) Charging unreasonable and inequitable fees for services performed, such as:

(a) Collection of monies due for principal;

(b) Dividends or transfer of securities;

(c) Appraisals;

(d) Safekeeping; or

(e) Custody of securities and other services related to its securities business,

(7) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer;

(8) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such a security exists other than that made, created or controlled by such broker-dealer, or by any such person for whom he or she is acting or with whom he or she is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(9) Failing to disclose in writing that the broker-dealer is controlled by, controls, is affiliated with or is under common control with the issuer of any security, the existence of such control before entering into any binding contract with or for a customer for the purchase or sale of such security;

(10) Failing to make a bona fide public offering of all the securities allotted to the broker-dealer for distribution, whether acquired directly as an underwriter or a selling group member or indirectly from an entity participating in the distribution as an underwriter or selling group member;

(11) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(12) Switching, churning, overtrading or reloading of a security in a customer's account for the purpose of accumulating or increasing a commission;

(13) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonably inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(14) Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a formal prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(15) Participating in the solicitation or offer for sale of a security without the use of an offering documents or prospectus (if required) or making a statement contrary to or inconsistent with disclosure contained in the offering document or prospectus;

(16) Making a false, misleading, deceptive or exaggerated representation or prediction in the solicitation or sale of a security, including:

(a) That the security will be resold or repurchased;

(b) That the security will be listed or traded on an exchange or established market;

(c) That the security will result in an assured, immediate or material increase in value, future market price or return on an investment;

(d) That there is a guarantee against risk of loss; or

(e) Any statement with respect to an issuer's financial condition, anticipated earnings, potential growth or success not supportable by information in the offering document or prospectus;

(17) Engaging or aiding in boiler room operations such as use of high pressure tactics to promote a speculative offering or promotion of a security in an intensive campaign in which the prospective purchaser is encouraged to make a hasty decision to buy a security irrespective of the purchaser's investment needs, objectives or understanding of the security being offered;

(18) Executing a transaction on behalf of a customer without

authorization to do so;

(19) Exercising any discretionary power effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the executing of orders;

(20) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement;

(21) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(22) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include any of the following:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(23) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer;

(24) Publishing or circulating, or causing the publication or circulation of, any notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer reasonably believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer reasonably believes that such quotation represents a bona fide bid or offer;

(25) Using any advertising or conducting any sales practice in such a way as to be deceptive or misleading;

(26) Entering into an agreement for a concession, discount, commission or allowance as consideration for a service in connection with the distribution or sale of a security in Kentucky with a broker-dealer, agent, investment adviser or investment adviser representative who is not either:

(a) Registered in Kentucky; or

(b) Exempted from the registration requirements for conducting a securities business in Kentucky.

(27) Lying to or otherwise misleading representatives of the Department of Financial Institutions conducting an authorized examination or investigation;

(28) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(29) Failing to respond within the specified time period to a written request from an authorized representative of the Department of Financial Institutions for information:

(a) An explanation of practices/procedures;

(b) A response to a complaint filed with the Department of Financial Institutions; or

(c) A response to a written statement of findings from an examination; and

(30) Committing any act involving a customer, a customer's account or any business records which would constitute a criminal offense.

Section 2. Broker-dealer agents shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices are considered contrary to such standards. Violations may result in a fine, suspension or revocation in proportion to the seriousness of the offense:

(1) Sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents;

(2) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(3) Effecting securities transactions not recorded on the regular books and records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by such broker-dealer prior to execution of the transaction;

(4) Engaging in the practice of lending to or borrowing from a customer either money or securities;

(5) Acting as custodian of a customer's money, securities or an executed stock power; and

(6) Engaging in conduct specified in Section 1(11) through (30) of this administrative regulation.

Section 3. Issuer agents shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices are considered contrary to such standards. Violations may result in a fine, suspension or revocation in proportion to the seriousness of the offense:

(1) Engaging in conduct specified in Section 1(2), (13), (15), (16), (17), (18), (25), (26), (27), (28), (29), or (30) of this administrative regulation.

(2) Engaging in conduct specified in Section2(3) or (4) of this administrative regulation.

Section 4. The commissioner may determine that an activity not included in the examples identified in Sections 1 through 3 of this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

CHARLES VICE, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2008

FILED WITH LRC: September 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: William Owsley, Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 236, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William B. Owsley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes examples of dishonest or unethical practices in the securities business by broker-dealers, broker-dealers representatives, and issuer agents.

(b) The necessity of this administrative regulation: The regulation sets standards honest and ethical practices in the securities

business by broker-dealers, broker-dealers representatives, and issuer agents and replaces the former administrative regulation (808 KAR 10:040) on the subject.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.330(13)(a)7 authorizes the commissioner of the Department of Financial Institutions to take disciplinary action against the registration of a broker-dealer or agent if that person has engaged in a dishonest or unethical practice. KRS 292.330(12) authorizes the commissioner to prohibit unreasonable charges, profits, commissions, or other compensation for broker-dealers and agents. This administrative regulation provides examples of dishonest and unethical practices by broker-dealers and agents and restates the consequences of engaging in such unacceptable conduct or practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation clarifies those practices which the commissioner considers to be dishonest or unethical in the securities business by broker-dealers and agents and which would authorize the commissioner to take disciplinary action.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All broker-dealers, broker-dealer representatives and issuer agents selling or offering for sale securities in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: No regulated person or entity is impacted. Broker-dealers and agents are already regulated by the commissioner and are subject to disciplinary action for dishonest or unethical practices in their profession.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated persons and entities will have a better understanding of what is considered to be a dishonest or unethical practice in the securities business and of the consequences of engaging in such practices.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registration fees generated cover the cost of examinations and investigations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not impact fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Fairness requires that all broker-dealers, broker-dealer representatives and issuer agents observe specified ethical conduct.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions, Division of Securities will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 292.330(12)(e) and KRS 292.500(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation simply defines unethical or dishonest practices which broker-dealers and agents registered in Kentucky should avoid. These broker-dealers and agents are already subject to periodic examination and investigation by the Division of Securities.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Securities
(New Administrative Regulation)

808 KAR 10:450. Examples of Dishonest or unethical practice for investment advisers and investment adviser representatives.

RELATES TO: KRS 292 330(13)(a)7

STATUTORY AUTHORITY: KRS 292.330(12)(e), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner of the Department of Financial Institutions to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(13)(a)7 authorizes the commissioner of the Department of Financial Institutions to take disciplinary action against the registration of an investment adviser or investment adviser representative if that person has engaged in a dishonest or unethical practice. KRS 292.330(12)(e) authorizes the commissioner to prohibit unreasonable charges or other compensation of investment advisers. This administrative regulation provides examples of dishonest and unethical practices by investment advisers and investment adviser representatives and clarifies the consequences of engaging in such unacceptable conduct or practices.

Section 1. Definitions. (1) "Investment adviser solicitor" means a person or person or entity that, directly or indirectly, solicits a prospective client for, or refers a prospective client to, an investment adviser.

(2) "Advertisement" means any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publica-

tion, by radio or television, or by any other medium, that offers any one of the following:

(a) Any analysis, report or publication concerning securities;

(b) Any analysis, report or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(c) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(d) Any other advisory service with regard to securities.

Section 2. A person who is an investment adviser or an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of its clients. An investment adviser or investment adviser representative shall not engage, either directly or indirectly, in unethical or dishonest practices. The following acts and practices such as the following are considered either a breach of fiduciary duty or a dishonest and unethical practice. Violations may result in a fine, suspension or revocation in proportion to the senousness of the offense:

(1) Recommending to a client to whom investment advisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an investment adviser or investment adviser representative in such situations can directly benefit from the number of securities transactions effected in a client's account;

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(8)(a) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser; or

(b) Misrepresenting the nature of the advisory services being offered or fees to be charged for such service; or

(c) Omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they were made, not misleading;

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact;

(10) Charging a client an unreasonable advisory fee in light of the fee charged by other investment advisers providing similar services;

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser, or any of its employees including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) The amount of any commissions to be received for executing transactions pursuant to advice given;

(12) Failing to disclose to clients in writing before any advice is rendered any material fact with respect to the financial and disciplinary information required to be disclosed by 17 C.F.R. 275.206(4)-4 (SEC Rule 206(4)4);

(13) Guaranteeing a client that a specific result will be achieved with advice which will be rendered;

(14) Using any advertisement that does any of the following:

(a) Refers to any testimonial of any kind concerning any advice, analysis, report or other service rendered by the adviser or representative;

(b) Refers to past specific recommendations of the adviser or representative that were or would have been profitable, except that an adviser or representative may furnish or offer to furnish a list of all recommendations made by said adviser or representative within the immediately preceding period of not less than one year if the list also includes the following:

1. The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security; and

2. A legend on the first page in prominent print or type that states that recommendations made in the future may not be as profitable as the securities on the list;

(c) Represents that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making that person's own decisions without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use;

(d) Represents that any report, analysis or other service will be furnished for free or without charge, unless such report, analysis or other service actually is or will be furnished free and without any direct or indirect condition or obligation;

(e) Represents that the Department of Financial Institutions has approved any advertisement; or

(f) Contains any untrue statement or omission of a material fact, or that is otherwise false or misleading.

(15) Disclosing the identity, affairs or investments of any client unless required by law to do so, or unless consented to in writing by the client;

(16) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the provisions of KAR 10:020 relating to such custody;

(17) Entering into, extending or renewing an advisory contract unless the contract is in writing and discloses the following:

(a) The nature of the advisory services to be provided:

(b) The time period that the contract remains in effect;

(c) The advisory fee and the formula for computing the fee;

(d) The amount of the prepaid fee to be returned in the event of contract termination or nonperformance;

(e) Whether the contract grants discretionary power to the adviser and, if so, the terms of the discretionary power;

(f) Whether the contract grants custody of client funds to the adviser and, if so, the terms of the custody; and

(g) That the adviser shall not assign the contract without the prior written consent of the client;

(18) Including in an advisory contract any condition, stipulation or provision binding any client to waive compliance with any provision of the Kentucky Securities Act (KRS Chapter 292) or any regulations promulgated thereunder or of the Investment Advisors Act of 1940;

(19) Paying compensation, directly or indirectly, to an investment adviser solicitor unless the investment adviser makes the payment in accordance with the requirements of 17 C.F.R. 275.206(4)-3) (SEC Rule 206(4)-3),

(20) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative contrary to the provisions of Section 206(4) of the Investment Advisors Act of 1940, whether or not the investment adviser is registered or required to be regis-

tered under Section 203 of said Act;

(21) Failing to provide all material information with respect to any dealings with or recommendations to any advisory client in violation of KRS 292.320;

(22) Committing any act involving a client, the client's assets or any business records which would constitute a criminal offense;

(23) Lying to or otherwise misleading a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(24) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation; and

(25) Failing to respond in a timely manner to a written request from an authorized representative of the Department of Financial Institutions for information:

(a) An explanation of practices or procedures;

(b) A response to a complaint filed with the department; or

(c) A response to a written statement of findings from an examination.

Section 3. The provisions of this regulation apply to federally covered advisers operating in Kentucky to the extent that the conduct alleged is fraudulent, deceptive or as otherwise permitted by the National Securities Market Improvement Act of 1996 (Pub. L. No. 104-290) and the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq).

Section 4. The commissioner may determine that an activity not included in the examples identified in Section 2 of this administrative regulation constitutes a dishonest or unethical practice if the activity is similar to an enumerated activity.

CHARLES VICE, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: September 10, 2008

FILED WITH LRC: September 15, 2008 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2008, at 10 a.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 2008 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON. William Owsley, Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 236, fax (502) 573-2183.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William B. Owsley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes examples of dishonest or unethical practices in the securities business by investment advisers and investment adviser representatives.

(b) The necessity of this administrative regulation: The regulation sets standards honest and ethical practices in the securities business by investment advisers and investment adviser representatives and replaces the former administrative regulation (808 KAR 10 040) on the subject.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.330(13)(a)7 authorizes the commissioner of the Department of Financial Institutions to take disciplinary action against the registration of an investment adviser or investment adviser representative if that person has engaged in a dishonest or unethical practice. KRS 292.330(12) authorizes the commissioner to prohibit unreasonable charges, profits, commissions, or other compensation for investment advisers and investment adviser representatives. This administrative regulation provides examples of dishonest and unethical practices by investment advisers and investment adviser representatives and clarifies the consequences of engaging in such unacceptable conduct or practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Allows the inspector to utilize the correct codes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All investment advisers and investment adviser representatives providing investment advisory services in the securities business in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: No regulated person or entity is impacted. Investment advisers and investment adviser representatives are already regulated by the commissioner and are subject to disciplinary action for dishonest or unethical practices in their profession.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated persons and entities will have a better understanding of what is considered to be a dishonest or unethical practice in the securities business and of the consequences of engaging in such practices.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registration fees generated cover the cost of examinations and investigations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not impact fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Ethical standards should apply uniformly to all investment advisers and investment adviser representatives.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions, Division of Securities will be

impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 292.330(12)(e) and 292.500(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation simply defines unethical or dishonest practices which broker-dealers and agents registered in Kentucky should avoid. These investment advisers and investment adviser representatives are already regulated by and subject to periodic examination and investigation by the Division of Securities.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Repealer)

906 KAR 1:011. Repeal of 906 KAR 1:010.

RELATES TO: KRS 194A.030(1)
STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 194A.030(1)(c)1, the Cabinet for Health and Family Services, Office of Inspector General, shall be responsible for the conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs. KRS 194A.050(1) authorizes the cabinet, by administrative regulation, to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation repeals 906 KAR 1:010, which is no longer needed because the primary purpose of 906 KAR 1:010 is to incorporate by reference the policies and procedures of cabinet programs that were subject to audit in 1992. Cabinet policies and programs currently subject to audit are established in each respective program's administrative regulations promulgated under KAR Title 902 Cabinet for Health and Family Services Department for Public Health, KAR Title 907 Cabinet for Health and Family Services Department for Medicaid Services, KAR Title 921 Cabinet for Health and Family Services Department for Community Based Services Family Support, and Title 922 Cabinet for Health and Family Services Department for Community Based Services Protection and Permanency.

Section 1. 906 KAR 1:010, Policies and procedures pertaining to audits, is hereby being repealed.

SADIQA N. REYNOLDS, ESQ., Inspector General
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 8, 2008
FILED WITH LRC: September 10, 2008 at 4 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2008, at 9 a m. in the Health Services Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 906 KAR 1:010, which is no longer needed because the primary purpose of 906 KAR 1:010 is to incorporate by reference the policies and procedures of Cabinet programs that were subject to audit in 1992. Cabinet policies and programs currently subject to audit are established in each respective program's administrative regulations promulgated under Title 902 Cabinet for Health and Family Services Department for Public Health, KAR Title 907 Cabinet for Health and Family Services Department for Medicaid Services, KAR Title 921 Cabinet for Health and Family Services Department for Community Based Services Family Support, and KAR Title 922 Cabinet for Health and Family Services Department for Community Based Services Protection and Permanency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by repealing an obsolete administrative regulation.

(d) This administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative assists in the effective administration of the statutes by repealing an obsolete administrative regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Not applicable, this administrative regulation repeals 906 KAR 1.010, Policies and procedures pertaining to audits.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Not applicable.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(b) On a continuing basis: Not applicable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable, this administrative regulation repeals 906 KAR 1.010, Policies and procedures pertaining to audits.

(9) Tiering: Is tiering applied? This administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(c) How much will it cost to administer this program for the first year? Not applicable, this administrative regulation repeals 906 KAR 1:010, Policies and procedures pertaining to audits.

(d) How much will it cost to administer this program for subsequent years? Not applicable, this administrative regulation repeals 906 KAR 1 010, Policies and procedures pertaining to audits.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care Facilities and Services
(Repealer)

906 KAR 1:031. Repeal of 906 KAR 1:030.

RELATES TO: KRS 194A.030(1)(c)2

STATUTORY AUTHORITY: KRS 194A.030(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 194A.030(1)(c)2, the Cabinet for Health and Family Services, Office of Inspector General, shall be responsible for licensing and regulatory functions as the secretary of the cabinet may delegate. KRS 194A 050(1) authorizes the cabinet, by administrative regulation, to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation repeals 906 KAR 1:030, which is no longer needed because all of the statutes under KRS Chapter 340 concerning the regulation of employment agencies have been repealed, and the cabinet is no longer responsible for regulating employment agencies.

Section 1. 906 KAR 1:030, Hearings concerning employment agencies, is hereby being repealed.

SADIQA N. REYNOLDS, ESQ., Inspector General
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 8, 2008

FILED WITH LRC: September 10, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2008, at 9 a.m. in the Health Services Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the Office of Inspector General does not regulate employment agencies.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by repealing an obsolete administrative regulation.

(d) This administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative assists in the effective administration of the statutes by repealing an obsolete administrative regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Not applicable, this administrative regulation repeals 906 KAR 1.030, Hearings concerning employment agencies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Not applicable, this administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Not applicable.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Not applicable, this administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(b) On a continuing basis: Not applicable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable, this administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable, this administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable, this administrative regulation repeals 906 KAR 1.030, Hearings concerning employment agencies.

(9) Tiering: Is tiering applied? This administrative regulation repeals 906 KAR 1.030, Hearings concerning employment agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Not applicable, this administrative regulation repeals 906 KAR 1 030, Hearings concerning employment agencies.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Not applicable, this administrative regulation repeals 906 KAR 1.030, Hearings concerning employment agencies.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not applicable, this administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable, this administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(c) How much will it cost to administer this program for the first year? Not applicable, this administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

(d) How much will it cost to administer this program for subsequent years? Not applicable, this administrative regulation repeals 906 KAR 1:030, Hearings concerning employment agencies.

Note If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(New Administrative Regulation)

906 KAR 1:170. Administrative Subpoenas.

RELATES TO: KRS 194A.025, 194A.030, 205.8453

STATUTORY AUTHORITY: KRS 194A.050(1), 205.170(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) directs the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations relating to the operation of programs within the cabinet. KRS 194A.030(1) provides that the Office of the Inspector General shall be responsible for the conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted, and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs. KRS 205.8453(4) allows the Cabinet for Health and Family Services to institute necessary or useful measures in controlling fraud and abuse. KRS 205.170(1) allows the Secretary of the Cabinet for Health and Family Services or the Secretary's authorized representative to issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda and other records considered necessary and relevant as evidence in connection with the administration of the cabinet. This administrative regulation provides for the delegation of the Secretary's subpoena power to the Inspector General and prescribes the conditions of that delegation of power. The Inspector General may issue subpoenas to compel the production of documents, records, or other physical evidence relevant to reviews, audits, or investigations conducted by the Office of Inspector General.

Section 1. Definitions. (1) "Documents" means information in any form or format that is relevant to a review, audit, or investigation conducted by the Office of Inspector General and may include:

(a) Medical records;

(b) Written documents;

(c) Computer files;

(d) Photographs;

(e) Audio and video recordings;

(f) Employment or wage data;

(g) Pension payment or insurance payment data;

(h) Account information from financial institutions; or

(i) Applications or other documents that establish eligibility for public assistance programs.

(2) "Justified by the circumstances" means that:

(a) Information requested by the Inspector General or Inspector General's designee is relevant to a review, audit, or investigation conducted by the Office of Inspector General; and

(b) The Inspector General or Inspector General's designee has reasonable grounds to believe that the requested information exists.

Section 2. Administrative Subpoenas. (1) If justified by the circumstances, the Inspector General or Inspector General's designee may issue a subpoena in accordance with KRS 205.170 to require the production of documents at a specified time and place.

(2) If information requested by the Inspector General or Inspector General's designee is encrypted, the respondent shall:

(a) Provide the information in a readable format; and

(b) Provide proof acceptable to the Inspector General or Inspector General's designee that the requested information has been translated to a readable format without error or omission.

(3) A person served with a subpoena in accordance with subsection (1) of this section shall not intentionally destroy, alter, or falsify documents requested by the Inspector General or Inspector General's designee.

Section 3. Noncompliance. (1) If a person fails without good cause to produce requested documents in accordance with Section 2(1) of this administrative regulation, the Inspector General or Inspector General's designee may apply to the circuit court of the county in which compliance is sought for an appropriate order to compel compliance with the provisions of the subpoena.

(2) If a person served with a subpoena issued pursuant to Section 2(1) of this administrative regulation believes that the subpoena seeks to compel the production of documents that are protected, privileged, or not properly the subject of an administrative subpoena, the individual may, prior to the date designated for the production of the documents, apply to the circuit court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely.

SADIQA N. REYNOLDS, ESQ , Inspector General
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 8, 2008

FILED WITH LRC: September 10, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2008, at 9 a.m. in the Health Services Board Room, Health Services Building, Second Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 14, 2008, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sadiqa N. Reynolds or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the use of subpoenas to compel the production of documents, records, or other physical evidence relevant to reviews, audits, or investigations conducted by the Office of Inspector General (OIG).

(b) The necessity of this administrative regulation: The OIG routinely conducts reviews, audits, and investigations that require information from individuals, and public and private sector entities. Information frequently requested from these outside entities includes: employment and wage data, pension payment and insurance payment data, account information from financial institutions, and medical records. This requested information is generally used to determine income and resource eligibility for Medicaid and other assistance program recipients, or to review the compliance of Medicaid providers and other Cabinet contractors and subcontractors with various federal and state laws and regulations. Therefore, this administrative regulation is necessary to provide for the delegation of the Secretary's subpoena power to the Inspector General so that the Inspector General (or the IG's designee) may issue subpoenas necessary to obtain information sufficient to complete reviews, audits, or investigations, or help prove cases of fraud in public assistance programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.170 which allows the Secretary of the Cabinet for Health and Family Services, or the Secretary's authorized representative, to issue subpoenas to compel the production of documents considered necessary and relevant as evidence in connection with the administration of the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the process for issuing subpoenas relevant to reviews, audits, or investigations conducted by the OIG.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect individuals who are served with a subpoena by the Inspector General or Inspector General's designee.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals served with a subpoena who do not otherwise apply to the Circuit Court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena, or quashing it entirely, will be required to produce documents considered necessary and relevant to a review, audit, or investigation conducted by the OIG.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The OIG does not anticipate that individuals or entities served with a subpoena will incur significant costs to comply with a request for the production of records relevant to a review, audit, or investigation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides for the delegation of the Secretary's subpoena power to the Inspector General, thereby increasing transparency by making public through this administrative regulation the conditions under which a subpoena may be issued. Additionally, this administrative regulation provides that individuals served with a subpoena may

Mr. Covington stated that the authority's intent was to send it to agencies that could benefit from the program, such as the area development districts.

In response to a question by Co-Chair Damron, Mr. Covington stated that the current bond pool total fund was $3.4 million. Co-Chair Damron stated strong opposition to an executive branch agency distributing funding since distribution of funds was under the jurisdiction of the General Assembly.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 3, 5 and 6 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 6 to clarify that an eligible project shall be reviewed by the Capital Projects and Bond Oversight Committee, and (5) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT. Without objection, and with the agreement of the agency, the amendments were approved.

Board of Veterinary Examiners: Board

201 KAR 16:110. Prescriptions and dispensation of drugs for animal use. Jim Grawe, assistant attorney general; Gerald W. Hoppmann, director; and Perry W. Wornall, board chairman, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (2) to amend Section 7 to clarify the role of the veterinary assistant in the dispensing of drugs; and (3) to amend Sections 1 to 3 and 5 to 7 to comply with the format and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing: Board

201 KAR 20:410. Expungement of records. Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Social Work: Board

201 KAR 23:015. Temporary permission to practice. Jim Grawe, assistant attorney general, Margaret Hazlette, board chairperson; and Gerald W. Hoppmann, director, represented the board.

In response to a question by Senator Tapp, Ms. Hazlette stated that four (4) to five (5) temporary permits to practice social work were issued yearly and that the intent of this administrative regulation was to allow recent graduates to become employed while waiting for licensure processing.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) comply with the drafting and format requirements of KRS Chapter 13A; and (2) provide 120, rather than sixty (60), days for a temporary permit extension. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

In response to a question by Senator Tapp, Ms. Hazlette stated that she could not comment regarding whether or not five (5) years of work in another jurisdiction was comparable to the amount of time required by other states for qualifying experience, but that the board had applicants with twenty (20) and thirty (30) years of experience. She further stated that the applicants would still be permitted to take the exam.

In response to a question by Co-Chair Roeding, Ms. Hazlette stated that the national board would not give the exam twice to the same applicant.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A 220; (3) to amend Sections 1 though 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to revise the contract incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Board of Certification of Alcohol and Drug Counselors: Board

201 KAR 35:020. Fees. Ryan Halloran, assistant attorney general; Gerald W. Hoppmann, director; and Terry L. Reams, board chairman, represented the board.

In response to a question by Co-Chair Roeding, Mr. Reams stated that the alcohol and drug counselors had been notified regarding the fees and that they did not make comment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35 040. Continuing education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Sections 1 through 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:050. Curriculum of study.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:060. Complaint procedure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 through 5 and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35.070. Supervision and work experience.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:082. Transportation and holding of exotic wildlife. Steven Dobey, program coordinator; David McChesney, program manager; Darin K. Moore, director; and Melany Taylor, attorney, represented the department.

In response to a question by Senator Tapp, Mr. Moore stated that this administrative regulation only affected fairs.

A motion was made and seconded to amend Sections 5, 7, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and hunts.

In response to a question by Representative Ford, Mr. Moore stated that this administrative regulation did not impact land owners' ability to hunt on their own land.

A motion was made and seconded to approve the amendment to Section 4 to correct a minor drafting error. Without objection, and with agreement of the agency, the amendment was approved.

301 KAR 2:176. Deer control tags and destruction permits.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Wildlife

301 KAR 4:070. Scientific and educational collecting permits.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to delete email addresses; and (2) to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Water Quality

401 KAR 5 012. Repeal of 401 KAR 5.040. Jory Becker, manager; Peter Goodmann, manager; Sandra Gruzesky, executive director; and Bruce Scott, commissioner, represented the department.

401 KAR 5:052. Requirements applicable to cooling water intake structures for facilities regulated by Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b).

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 1 to make technical corrections; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531. Without objection, and with agreement of the agency, the amendments were approved.

Water Wells

401 KAR 6:001. Definitions for 401 KAR Chapter 6.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 6.310. Water supply well construction practices and standards.

In response to a question by Senator Tapp, Mr. Goodmann stated that jetted wells and driven-point wells were prohibited for public water supply use because the wells did not have a sanitary seal and contaminates could migrate into the water supply. Mr. Goodmann stated that this was a public health concern.

A motion was made and seconded to approve the amendment to add a statutory citation to the RELATES TO paragraph. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 6 320. Certification of water well drillers.

401 KAR 6:350. Monitoring well construction practices and standards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Section 4 to include requirements for flush-mount monitoring well surface pads. Without objection, and with agreement of the agency, the amendments were approved.

Water Quality Certification

401 KAR 9.020. Section 401 Water Quality Certification fees.

Co-Chair Roeding thanked the department for exempting fees for applications for certifications for impacts to streams up to 500 linear feet.

In response to a question by Co-Chair Roeding, Mr. Scott stated that duplexes and triplexes would most likely fall into the exemption for impacts to streams up to 500 linear feet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make technical changes and to conform to the reorganization authorized by Executive Orders 2008-507 and 2008-531; (3) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 3 to revise the fee system to remove fees for the cost of processing applications for certifications impacting streams up to 500 linear feet; (5) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT; and (6) to add a FEDERAL MANDATE ANALYSIS COMPARISON, as required by KRS 13A.245. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Kentucky State Police: General Traffic

502 KAR 15.010 & E. Accident reports. John Carnco, lieutenant; Morgain Sprague, attorney; and Stacy Warnecke, DNA database supervisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 to 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DNA

502 KAR 32:010 & E. Centralized database for DNA identification records

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 7, and 8 to conform to the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Driver Improvement

601 KAR 13.070. KRS 159.051. Compliance verification for a minor. Dana Fugazzi, attorney; Doug Sutton, assistant director; and Cindy VanHoose, director, represented the cabinet.

Co-Chair Roeding thanked the department for its hard work on this administrative regulation.

Co-Chair Damron thanked the department and stated that it was his understanding that the sponsor of the legislation was in agreement with this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY

challenge the cabinet by applying to the Circuit Court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely, a protection which may be implied, but is not articulated by state law. Further, the OIG anticipates that the use of subpoenas will enhance its ability to complete audits and fraud investigations that would otherwise be compromised or terminated without the ability to compel a person to produce relevant documents. The use of subpoenas will also enhance the OIG's ability to prove cases of fraud in public assistance programs and obtain information necessary to establish claims owed to the Commonwealth. The expected increase in the amount of claims established will allow the cabinet to initiate more collection actions, thereby preserving the integrity of public assistance programs and maximizing available funds to a greater degree.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs will be incurred by the Office of Inspector General to implement this administrative regulation.

(b) On a continuing basis: No costs will be incurred on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from federal and state matching funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact individuals who are served with a subpoena by the Inspector General, or Inspector General's designee, to compel the production of documents considered necessary and relevant to reviews, audits, or investigations conducted by the OIG. Additionally, this administrative regulation provides that individuals served with a subpoena may challenge the cabinet by applying to the Circuit Court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely, a protection which may be implied, but is not articulated by state law.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.170, 194A.025

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The OIG anticipates that the use of subpoenas will enhance its ability to complete audits and fraud investigations that would otherwise be compromised or terminated without the ability to compel a person to produce documents. The use of subpoenas will also enhance the OIG's ability to prove cases of fraud in public assistance programs and obtain information necessary to establish claims owed to the Commonwealth. The expected increase in the amount of claims established will allow the cabinet to initiate more collection actions, thereby preserving the integrity of public assistance programs and maximizing available funds to a greater degree. The cabinet cannot, however, predict with accuracy the amount of savings the cabinet anticipates as a result of using subpoenas to compel the production of documents relevant to reviews, audits, or investigations conducted by the OIG.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The OIG anticipates that the use of subpoenas will enhance its ability to complete audits and fraud investigations that would otherwise be compromised or terminated without the ability to compel a person to produce documents. The use of subpoenas will also enhance the OIG's ability to prove cases of fraud in public assistance programs and obtain information necessary to establish claims owed to the Commonwealth. The expected increase in the amount of claims established will allow the cabinet to initiate more collection actions, thereby preserving the integrity of public assistance programs and maximizing available funds to a greater degree. The cabinet cannot, however, predict with accuracy the amount of savings the cabinet anticipates as a result of using subpoenas to compel the production of documents relevant to reviews, audits, or investigations conducted by the OIG.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred by the Office of Inspector General to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of September 9, 2008

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 9, 2008 at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Robert Damron called the meeting to order, the roll call was taken. The minutes of the August 12, 2008 meeting were approved.

Present were:

Members: Senators Dick Roeding, Joey Pendleton, and Gary Tapp; and Representatives Robert Damron, Danny Ford, and Ron Weston.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenrider, Laura Milam, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Mike Carr, Alicia Sneed, Dr. Marilyn Troupe, Education Professional Standards Board; Richard Dobson, Ricky Haven, Department of Revenue; John Covington, Kentucky Infrastructure Authority; Jeff Boler, Jim Grawe, Gerald Hoppman, Perry Wornall, Board of Veterinary Examiners; Nathan Goldman, Board of Nursing; Margaret Hazlette, Board of Social Work; Ryan Halloran, Terry Reams, Board of Certification of Alcohol and Drug Counselors; Steven Dobey, David McChesney, Darin Moore, Melany Taylor; Department of Fish and Wildlife Resources; Jory Becker, Barry Elmore, Peter Goodmann, Alan Grant; Sandra Gruzesky; Abigail Powell, Tom Vanarsdall, Division of Water; John Carrico, Mark Mangeot, Morgain Sprague, Stacy Warnecke, Department of Kentucky State Police; Dana Fugazzi, Doug Sutton, Cindy Vanhoose, Department of Vehicle Regulation; James Cundy, Mark Myers, Department for Libraries and Archives; Tamela Biggs, Larry Moore, Department for Workforce Development; Brenda Parker, Melia Rivera, Kentucky Department of Insurance; Carrie Banahan, Jeni Cracraft, Cabinet for Health and Family Services; Guy Delius, Vonia Grabeel, Department of Public Health; Stephanie Brammer-Barnes, Wendy Fletcher, Jan Gould, Brad Hall, David Hopkins, Van Ingram, Sharon Eli Mercer, Jeffrey Osman, Beth Partin, Sadiqa Reynolds, Dave Sallengs, Stan Salyards, Matt Thomerson, Lloyd Vest, Gary Williamson, Paula York, Office of Inspector General; Stuart Owen, Department for Medicaid Services; Elizabeth Caywood, Justin Dearinger, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, September 9, 2008, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Administrative Certificates

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades. Mike Carr, director of certification; Alicia A. Sneed, director of legal services; and Dr. Marilyn Troupe, director of the Division of Educator Preparation, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms

103 KAR 3:020. Sales and Telecommunications Forms manual. Richard Dobson, executive director, and Ricky Haven, director, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A and to use the correct titles of the forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 3:050. Miscellaneous Taxes Forms manual.

In response to a question by Co-Chair Roeding, Mr. Dobson stated that the forms relating to miscellaneous taxes were being updated as part of the annual update of this administrative regulation and that this administrative regulation updated forms relating to taxes for health-care providers.

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 15 to comply with the drafting and format requirements of KRS Chapter 13A and to use the correct titles of the forms incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; General Exemptions

103 KAR 30:091. Sales to farmers.

In response to a question by Senator Pendleton, Mr. Dobson stated that agents for hormone enhancement for the production of milk were tax exempt.

In response to questions by Co-Chair Roeding, Mr. Dobson stated that KRS 139.480 described aquatic organisms, including prawns and catfish. Catfish farms were exempt from Kentucky sales tax. A single certification sufficed for on-farm repairs such as repairing a fence or expanding a pond but that, if a contractor was involved, the certification had a specific time frame for the repairs or construction. This administrative regulation provided examples, rather than an exhaustive list of sales and use tax provisions for sales to farmers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to add definitions for "crops", "farmer", "farm machinery", and "person"; (4) to amend Sections 1 to 13 to comply with the drafting and format requirements of KRS Chapter 13A and to clarify examples of farm-related items exempt from sales and use tax; and (5) to add Revenue Policy 51P360 to the list of policies rescinded by this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Office of Sales and Excise Taxes

103 KAR 31:200. Energy efficiency products.

A motion was made and seconded to approve the following amendments: (1) to amend the title and Sections 2, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the RELATES TO paragraph and Section 1 to correct statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Kentucky Infrastructure Authority: Continuing education requirements

200 KAR 17:090. Guidelines Kentucky Infrastructure Authority Grants from Unobligated Bond Pool Funds. John E. Covington, III, executive director, represented the authority.

In response to questions by Senator Tapp, Mr. Covington stated that the Unobligated Bond Pool was for water and sewer emergencies or needs between sessions of the General Assembly, such as a package water or sewer plant that stopped working or was taken over by a public water supply system or a package plant that was damaged after a vehicle collided into it. The project maximum was $500,000 and the current bond pool total fund was $3.4 million.

In response to a question by Co-Chair Roeding, Mr. Covington stated that the board approved funding for a project and then sent the matter to the Capital Projects and Bond Oversight Committee. In response to a request by Co-Chair Roeding for the authority to send a copy of this administrative regulation to local governments,

AUTHORITY paragraphs to correct citations; (2) to amend the TITLE and NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the function served by this administrative regulation; (3) to amend Section 2 to set forth all requirements for a minor driver license application and to delete the "School Compliance Verification for Driver Licensing Form" and replace it with the "Driver License-ID Card Application Form"; (4) to amend Sections 4 and 5 to clarify the process for notification of compliance with KRS 159.051 and notification of reapplication after compliance is established; and (5) to amend Sections 2 to 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department for Libraries and Archives: Archives

725 KAR 1:030. Scheduling public records for retention and disposal; procedures. James Cundy, manager, and Mark Myers, archivist, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

Department for Workforce Development: Unemployment Insurance

787 KAR 1:190. Recoupment and recovery. Larry W. Moore, policy analyst, represented the department.

A motion was made and seconded to approve amendments to Section 1 to comply with the drafting requirements of KRS 13A.222(4)(a). Without objection, and with agreement of the agency, the amendments were approved.

Employment Services

787 KAR 2:020. Confidentiality of records of the office of employment and training.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 17:180 & E. Standard health benefit plan. Brenda Parker, manager, and Melea Rivera, health policy specialist, represented the department.

In response to a question by Co-Chair Roeding, Ms. Parker stated that the 2008 General Assembly amended the statutes pertaining to the standard plan and those changes necessitated corresponding modifications to this administrative regulation.

806 KAR 17.310. Prompt payment of claims reporting requirements.

In response to a question by Co-Chair Roeding, Ms. Parker stated that this administrative regulation did not add new requirements regarding purchasing dental insurance but it did clarify the requirement for prompt payment of dental claims.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; and (2) to delete requirement language from the NECESSITY, FUNCTION, AND CONFORMITY paragraph. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:360. Prompt payment of claims.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; and (2) to delete requirement language from the NECESSITY, FUNCTION, AND CONFORMITY paragraph. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:370. Standardized health claim attachments.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; (2) to delete requirement language from the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:050 & E. Certificate of need administrative regulation. Carrie Banahan, executive director, and Joni Cracraft, staff advisor, represented the office.

Senator Tapp stated that he had been waiting six (6) years for this administrative regulation.

Representative Weston stated that this administrative regulation would assist with the needs for hospitals in adjacent counties as well as the county where the hospital will be located.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 7, 8, 12, 15, 17 to 20, 23, 24, 27, and 29 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Public Health: Food and Cosmetics

902 KAR 45:150. School sanitation. Guy Delius, acting director, and Vonia Grabeel, supervisor, represented the department.

In response to a question by Representative Ford, Mr. Delius stated that this amendment applied tiering to smaller, parochial schools and did not make it harder for schools to comply with the school sanitation requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, and 3 to 11 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to create a new Section 11 to incorporate by reference the required School Inspection Report form. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Medicaid Services

907 KAR 1:026. Dental services. Stuart Owen, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1.626. Reimbursement of dental services.

907 KAR 1:911E. Repeal of 907 KAR 1:013.

Department for Community Based Services: Child Welfare

922 KAR 1:360 & E. Private child care placement, levels of care, payment. Elizabeth Caywood, policy analyst, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correctly reference the 2008 budget bill, 2008 Ky. Acts ch. 127, Part 1, H.10(3); (2) to amend Section 5(2) to clarify how the index factor for median levels of care were established; and (3) to amend Sections 1 through 6, 11, and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the October 14, 2008, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: State Board of Examiners and Registration of Landscape Architects: Board
201 KAR 10:050. Fees.

Kentucky Board of Certification of Alcohol and Drug Counselors: Board
201 KAR 35:080. Voluntary inactive status.

INDEPENDENT ADMINISTRATIVE BODIES: Kentucky Board of Emergency Medical Services: Board
202 KAR 7:330 & E. Requirements for examination, certification, and recertification of the advanced emergency medical technician.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary
501 KAR 6.200. Comprehensive sex offender presentence evaluation procedure.

Department of Kentucky State Police: Criminal History
502 KAR 30.060. Dissemination of criminal history record information.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School Terms, Attendance and Operation
702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

School Terms, Attendance and Operation
702 KAR 7:130 & E. Approval of innovative alternate school calendars.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Thoroughbred Racing
810 KAR 1:012. Horses.
810 KAR 1:015. Claiming races.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: E-Health
900 KAR 7:020. Kentucky e-Health Corporation.

Office of Inspector General: Controlled Substances
902 KAR 55:030. Schedule IV substances. Stephanie Brammer-Barnes, policy analyst; Sadiqa Reynolds, inspector general; and Dave Sallengs, manager, represented the office.

In response to questions by Co-Chair Damron, Ms. Reynolds stated that stakeholders were aware that the office did not plan to defer this administrative regulation and that Arkansas also classified Tramadol as a scheduled drug.

Co-Chair Roeding stated that Tramadol was abused and has withdrawal effects. He further stated that, in 2005, emergency room treatment pertaining to Tramadol indicated a problem and that Kentucky was the leading state in prescription drug abuse. He was concerned, though, about involvement and communication during the amendment process.

In response to a question by Co-Chair Damron, Ms. Reynolds stated that the United States Drug Enforcement Agency and the Legislative Research Commission Program Review and Investigations Committee recommended scheduling Tramadol and that pharmacists' statistics also indicated a problem.

Senator Tapp stated that members of the subcommittee needed more advanced notice of the issues raised by this administrative regulation.

Co-Chair Roeding stated his agreement with Senator Tapp and stated that numerous professional boards and associations, as well as law enforcement agencies, the Justice and Public Safety Cabinet, and lobbyists supported the scheduling of Tramadol.

A motion was made and seconded to defer consideration of this administrative regulation until the subcommittee's October meeting. Ms. Reynolds stated that the department would agree to defer this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred.

The Subcommittee adjourned at 11:30 a.m. until October 14, 2008.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of September 12, 2008

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture and Natural Resources for its meeting of September 12, 2008, having been referred to the Committee on September 3, 2008, pursuant to KRS 13A.290(6):

301 KAR 1:140
301 KAR 1:146
301 KAR 1:155
301 KAR 3.022
302 KAR 76:110E
401 KAR 60.021, repeal of 401 KAR 60.020

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 12, 2008 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates D - 2

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2008 through June, 2009 It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in VOLUME 34 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2008 bound Volumes were published.

KRS Index D - 8

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 35 of the Administrative Register.

Subject Index D - 16

The Subject Index is a general index of administrative regulations published in VOLUME 35 of the Administrative Register, and is mainly broken down by agency.

VOLUME 34

The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	34 Ky.R. Page No.	Effective Date
103 KAR 3:010E	2066	2-11-08
103 KAR 3:030E	2266	2-19-08
Replaced		7-7-08
103 KAR 3.040E	1925	1-15-08
103 KAR 31:180E	1350	11-15-07
Replaced		7-7-08
201 KAR 20:070E	2500	5-5-08
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* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A 310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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230.260	810 KAR 1:012
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230.361	810 KAR 1:028
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243.720	922 KAR 3:050
243.730	922 KAR 3:050
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